

**CHAPTER 103**  
**EXPENDITURE OF PUBLIC MONEY AND PUBLIC CONTRACTS**

Part I. General Provisions

Section

- 103-1 What warrants prohibited
- 103-1.5 Definitions
- 103-2 General fund
- 103-3 Repealed
- 103-4 Expenditure from general appropriation unlawful, when
- 103-5 Emergency expenditures from general appropriations
- 103-6 Temporary use of funds
- 103-7 Capital improvements; authorizations for; emergency repairs or reconstruction, exception
- 103-8 Repealed
- 103-8.5 Works of art special fund
- 103-9 False certificates or approval; penalty
- 103-10 Payment for goods and services
- 103-10.5 Prompt payment
- 103-11 Rules of comptroller
- 103-12 Capital improvement projects; personnel training; management
- 103-15 Repealed

Part II. Public Works and Contracts

- 103-21 to 32 Repealed
- 103-32.1 Contract provision for retainage; subcontractors
- 103-32.2 Substitution of retainage
- 103-33 to 39 Repealed
- 103-39.5 Construction, renovation, or repair of school facilities; county permit exemption
- 103-40 Federal-aid highway contracts
- 103-41 to 49 Repealed
- 103-50 Building design to consider needs of persons with disabilities; review fees
- 103-50.5 to 52 Repealed
- 103-53 Contracts with the State or counties; tax clearances, assignments
- 103-53.5, 54 Repealed
- 103-55 Wages, hours, and working conditions of employees of contractors performing services
- 103-55.5 Wages and hours of employees on public works construction contracts
- 103-55.6 Public works construction; apprenticeship agreement
- 103-56 to 60 Repealed

Part III. Pollution Control--Repealed

103-61 Repealed

Part IV. Additional Procurement Procedures

103-71 Repealed

103-72 Transcription of instructional materials

Part V. Products and Services of Handicapped  
Individuals--Repealed

103-81 to 83 Repealed

### **Note**

Department of accounting and general services; status report to 2017 legislature on implementation of practices required by L 2016, c 241. L 2016, c 241, §3.

### **Cross References**

Employment of state residents on construction procurement contracts, see chapter 103B.

Hawaii public procurement code, see chapter 103D.

### **Law Journals and Reviews**

Emerging Trends in International, Federal, and State and Local Government Procurement in an Era of Global Economic Stimulus Funding. 32 UH L. Rev. 29.

### **"PART I. GENERAL PROVISIONS**

**§103-1 What warrants prohibited.** No warrants shall be drawn for any sum on account of any salary or payroll in excess of the amount then due, nor shall any warrant for any purpose be drawn except in accordance with the provisions of law. [L 1909, c 62, §4; RL 1925, §1480; RL 1935, §110; RL 1945, §367; RL 1955, §9-1; HRS §103-1]

" **[\$103-1.5] Definitions.** The definitions of chapter 103D shall apply to this chapter unless the context clearly requires otherwise. [L 1999, c 149, §1]

" **§103-2 General fund.** All revenues of the State or of any agency thereof not specifically appropriated to other purposes shall be general realizations of the State to be available for general use in financing government operations and services, which revenues and realizations in their aggregate are herein referred to as the "general fund". Expenditures from this fund shall be authorized by the legislature through appropriations or otherwise, and expenditures shall be made in accordance with laws and regulations governing the expenditure of public funds generally. [L 1959, c 265, §2; Supp, §9-1.1; HRS §103-2]

" **§103-3 REPEALED.** L Sp 1993, c 8, §25.

### **Note**

L 1994, c 92, §1 purports to amend this section.

" **§103-4 Expenditure from general appropriation unlawful, when.** Whenever a specific appropriation is made for a particular object, it shall be unlawful to make any expenditure from a general appropriation which would otherwise cover such particular object. [L 1909, c 62, §5; RL 1925, §1481; RL 1935, §111; RL 1945, §368; RL 1955, §9-3; HRS §103-4]

#### Case Notes

Use of prison labor on project exhausted of funds held proper. 8 H. 129.

Referred to: 39 H. 308, 321.

" **§103-5 Emergency expenditures from general appropriations.** No expenditure shall be made under any general appropriation for emergencies except for urgent causes arising when the legislature is not in session, or without the approval of the governor. [L 1909, c 62, §6; RL 1925, §1482; RL 1935, §112; RL 1945, §369; RL 1955, §9-4; HRS §103-5]

" **§103-6 Temporary use of funds.** The state and county directors of finance may, with the consent of the governor, in the case of state funds, and of the council, in the case of county funds, use any portion of moneys belonging to any funds under their control, except pension or retirement funds, funds set aside for the redemption of bonds or the payment of interest thereon, and private trust funds, for the purpose of paying warrants drawn against any fund temporarily depleted. All sums so used shall be repaid to the credit of the fund from which taken immediately after the replenishment of such depleted fund.

Whenever there are moneys in any fund of any county, except pension or retirement funds, funds under the control of any independent board or commission, funds set aside for redemption of bonds or the payment of interest thereon, and private trust funds, which in the judgment of the director of the county are in excess of the amounts necessary for the immediate requirements of the respective funds, and where in the county director's judgment such action will not impede the necessary or desirable financial operations of the county, the county director may, with the consent of the council, make temporary transfers or loans therefrom, without interest, to other funds of the county for undertaking public improvements for which the issuance and sale of the general obligation bonds have been duly authorized by the legislature and by the council in accordance with chapter 47. Such transfers shall be made only after passage by the council of an ordinance or resolution authorizing

the public improvements. Amounts transferred under this paragraph shall not, in any county, exceed the total sum of unissued authorized bonds of the county. The funds from which the transfers or loans are made shall be reimbursed by the county director from the proceeds of the bond sales upon the eventual issuance and sale of the bonds, or by appropriations of the council. [L 1931, c 33, §1; am L 1933, c 74, §1; RL 1935, §113; RL 1945, §370; am L 1953, c 176, §1; RL 1955, §9-5; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §103-6; gen ch 1993]

#### **Revision Note**

References to county treasurers and boards of supervisors deleted to conform to county charters.

#### **Attorney General Opinions**

General obligation bond funds may be used to temporarily augment the general fund. Att. Gen. Op. 72-11.

" **§103-7 Capital improvements; authorizations for; emergency repairs or reconstruction, exception.** All capital improvement projects requiring the use of general funds, special funds, general obligation bonds, and revenue bonds of the State, except projects covered by chapter 41D shall require authorization by the legislature and the governor. [L 1961, c 75, §1; Supp, §9-5.5; am L 1967, c 272, §1; HRS §103-7; am L 1989, c 261, §4]

#### **Attorney General Opinions**

Money appropriated for specific purpose cannot be used for another purpose. Att. Gen. Op. 70-4.

" **§103-8 REPEALED.** L 1989, c 389, §3.

" **§103-8.5 Works of art special fund.** (a) There is created a works of art special fund, into which shall be transferred one per cent of all state fund appropriations for capital improvements designated for the construction cost element; provided that this transfer shall apply only to capital improvement appropriations that are designated for the construction or renovation of state buildings. The one per cent transfer requirement shall not apply to appropriations from the passenger facility charge special fund established by section 261-5.5 and the rental motor vehicle customer facility charge special fund established under section 261-5.6.

(b) The works of art special fund shall be used solely for the following purposes:

- (1) Costs related to the acquisition of works of art, including any consultant or staff services required to carry out the art in public places and relocatable works of art programs;
- (2) Site modifications, display, and interpretive work necessary for the exhibition of works of art;
- (3) Upkeep services, including maintenance, repair, and restoration of works of art;
- (4) Storing and transporting works of art.

(c) The one per cent amount, which is included in all capital improvement appropriations, shall be calculated at the time the appropriation bills are signed into law. The moneys shall be transferred into the works of art special fund upon availability of moneys from the appropriations. Each agency receiving capital improvement appropriations shall calculate the one per cent amount and transfer the moneys into the works of art special fund.

(d) The comptroller and the state foundation on culture and the arts shall decide on the specific art objects to acquire, giving first consideration to placing appropriate pieces of art at the locations of the original appropriation.

The selection of, commissioning artists for, reviewing of design, execution, and placement of, and the acceptance of works of art shall be the responsibility of the comptroller and the state foundation on culture and the arts in consultation with the affected agency or department.

Expenditures from the works of art special fund shall be made by the comptroller.

(e) The comptroller shall:

- (1) Provide each agency receiving capital improvement appropriations with information regarding items that shall be included and excluded from the one per cent amount;
- (2) Ensure that each agency calculates its one per cent amount correctly; and
- (3) Ensure that each agency transfers the correct amount to the works of art special fund in a timely manner.

(f) The comptroller and the executive director shall track amounts due from each agency under the one per cent requirement as provided in this section. [L 1989, c 389, §1; am L 1999, c 80, §§5, 8(1); am L 2003, c 178, §59 and c 213, §16; am L 2004, c 101, §3; am L 2008, c 226, §5]

#### **Cross References**

Student art work, see §9-4.

" **§103-9 False certificates or approval; penalty.** Any public officer or employee who falsely certifies or approves for payment any bill or voucher, or any claim against the State or any county; or who causes or authorizes the purchase of any materials or supplies or the performance of any service or labor on behalf or for the benefit of the State or any county, in the absence of any appropriations, or in excess of any appropriations made for such purposes, with the intent that the materials or supplies so purchased or the service or labor so performed shall be paid for by the State or county shall be fined not more than \$500, or imprisoned not more than one year, or both. [L 1909, c 62, §7; am L 1915, c 86, §1; RL 1925, §1484; am L 1933, c 6, §1; RL 1935, §114; RL 1945, §371; RL 1955, §9-6; HRS §103-9; am L Sp 1993, c 8, §4]

#### **Cross References**

Use of appropriation for preservation of historical sites, see §6E-9.

#### **Case Notes**

Cited: 30 H. 791.

" **§103-10 Payment for goods and services.** (a) Any person who renders a proper statement for goods delivered or services performed, pursuant to contract, to any agency of the State or any county, shall be paid no later than thirty calendar days following receipt of the statement or satisfactory delivery of the goods or performance of the services. In the event circumstances prevent the paying agency from complying with this section, the person shall be entitled to interest from the paying agency on the principal amount remaining unpaid at a rate equal to the prime rate for each calendar quarter plus two per cent, commencing on the thirtieth day following receipt of the statement or satisfactory delivery of the goods or performance of the services, whichever is later, and ending on the date of the check. As used in this subsection, "prime rate" means the prime rate as posted in the Wall Street Journal on the first business day of the month preceding the calendar quarter.

(b) This section shall not apply in those cases where delay in payment is due to:

- (1) A bona fide dispute between the State or any county and the contractor concerning the services or goods contracted for;

- (2) A labor dispute;
- (3) A power or mechanical failure;
- (4) Fire;
- (5) Acts of God; or
- (6) Any similar circumstances beyond the control of the State or any county.

Where the time of payment is contingent upon the receipt of federal funds, or federal approval, the solicitation of bids for contracts shall clearly state that payment is contingent upon those conditions. If the solicitation for bids contains the warning and a contract is awarded in response to the solicitation then interest shall not begin to accrue upon any unpaid voucher until the thirtieth day following receipt by the State or county of the contractor's statement or the thirtieth day following receipt of the federal funds or approval, whichever occurs later, and shall end as of the date of the check.

(c) All goods or services purchased by a state agency which are less than \$25, except those purchased through the use of a state procurement card, shall be paid from the petty cash funds of the agency; provided that the comptroller may establish a higher threshold for petty cash payments and may grant exceptions to this requirement.

(d) Any other law to the contrary notwithstanding, the payments for goods and services obtained through use of any state or county procurement card shall be made under the terms and conditions specified in the contract under which the procurement card was established. [L 1967, c 292, §2; HRS §103-10; am L 1977, c 95, §1; am L 1984, c 235, §1; am L 1985, c 281, §1; am L 1988, c 389, §1; am L 1990, c 87, §1; am L 1996, c 213, §1; am L 2003, c 51, §2; am L 2004, c 203, §1]

" **§103-10.5 Prompt payment.** (a) Any money paid to a contractor shall be disbursed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the procurement officer has withheld payment.

(b) Upon final payment to the contractor, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided there are no bona fide disputes over the subcontractor's performance under the subcontract.

(c) Where a subcontractor has provided evidence to the contractor of satisfactorily completing all work under their subcontract and has provided a properly documented final payment



request as described in subsection (d) of this section, and:

- (1) Has provided to the contractor an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in section 103-32.1; or
- (2) The following has occurred:
  - (A) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to contractor and the surety, as provided for in section 103D-324; and
  - (B) The subcontractor has provided to the contractor:
    - (i) An acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the contractor;
    - (ii) Any other bond acceptable to the contractor; or
    - (iii) Any other form of mutually acceptable collateral,

all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the procurement officer to the contractor and subsequently, upon receipt from the procurement officer, by the contractor to the subcontractor within the applicable time periods specified in subsection (b) and section 103-10. If the procurement officer or the contractor fails to pay in accordance with this section, a penalty of one and one-half per cent per month shall be imposed upon the outstanding amounts due that were not timely paid by the responsible party. The penalty may be withheld from future payment due to the contractor, if the contractor was the responsible party. If a contractor has violated subsection (b) three or more times within two years of the first violation, the contractor shall be referred by the procurement officer to the contractor license board for action under section 444-17(14).

(d) A properly documented final payment request from a subcontractor, as required by subsection (c), shall include:

- (1) Substantiation of the amounts requested;
- (2) A certification by the subcontractor, to the best of the subcontractor's knowledge and belief, that:
  - (A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;

- (B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and
  - (C) The payment request does not include any amounts that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and
- (3) The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The procurement officer shall return any final payment request that is defective to the contractor within seven days after receipt, with a statement identifying the defect.

(e) In the case of a construction contract, a payment request made by a contractor to the procurement officer that includes a request for sums that were withheld or retained from a subcontractor and are due to a subcontractor may not be approved under subsection (c) unless the payment request includes:

- (1) Substantiation of the amounts requested; and
- (2) A certification by the contractor, to the best of the contractor's knowledge and belief, that:
  - (A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
  - (B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the contract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and
  - (C) The payment request does not include any amounts that the contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

The procurement officer shall return any final payment request that is defective to the contractor within seven days after receipt, with a statement identifying the defect.

(f) This section shall not be construed to impair the right of a contractor or a subcontractor at any tier to

negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under subsection (c) of this section; provided that any such payments withheld shall be withheld by the procurement officer. [L 1983, c 277, §1; am L 2000, c 164, §2; am L 2006, c 291, §2]

" **§103-11 Rules of comptroller.** The comptroller shall adopt rules pursuant to chapter 91 as necessary, for the purposes of this chapter. Any violation of the rules shall be subject to the penalties prescribed in section 103-9. [L 1911, c 47, §2; RL 1925, §1485; RL 1935, §115; RL 1945, §372; RL 1955, §9-7; am L 1957, c 152, §1; am L 1965, c 96, §3; HRS §103-11; am L 1999, c 149, §6]

" **[§103-12] Capital improvement projects; personnel training; management.** (a) The comptroller shall conduct annual training for the engineering personnel of all executive departments and state agencies that manage their own capital improvement projects to ensure compliance with state adopted standards and procedures of best practices in the management and construction of capital improvement projects. Each department and agency shall provide orientation training for new employees subject to this subsection and who are hired during the interim between annual trainings.

(b) All executive departments and state agencies that manage their own capital improvement projects shall:

- (1) Use timelines that include a comprehensive list of all activities required on a project, and not simply rely on contractor timelines, which may not reflect all project phases. At a minimum, the list shall include all phases in a project's life cycle, namely, the initiation, planning, design, bid, construction, and post construction phases;
- (2) Follow state procurement office guidance for tracking payments and deliverables by using a contract administration worksheet that includes milestones or deliverables, which are marked off as items are completed; and
- (3) To help ensure end-user satisfaction with their capital improvement projects, identify and involve stakeholders throughout a project's execution and closing, including providing information about project costs, schedules, and performance. [L 2016, c 241, §2]

**Note**

Department of accounting and general services; status report to 2017 legislature on implementation of practices required by L 2016, c 241. L 2016, c 241, §3.

" **§103-15 REPEALED.** L 1999, c 149, §27.

## "PART II. PUBLIC WORKS AND CONTRACTS

### Cross References

Employment of state residents on construction procurement contracts, see chapter 103B.

**§103-21 REPEALED.** L 1999, c 149, §28.

" **§103-22 REPEALED.** L Sp 1993, c 8, §26.

" **§103-22.1 REPEALED.** L 1999, c 149, §29.

" **§§103-23, 23.2, 23.5, 24 REPEALED.** L Sp 1993, c 8, §§27 to 30.

" **§103-24.5 REPEALED.** L 1994, c 186, §20.

### Note

L 1994, c 186, §28 purports to amend this section.

" **§103-24.6 REPEALED.** L 1999, c 149, §30.

" **§§103-25 to 32 REPEALED.** L Sp 1993, c 8, §§31 to 38.

" **§103-32.1 Contract provision for retainage; subcontractors.** (a) Any retainage provided for in this section or requested to be withheld by the contractor shall be held by the procurement officer.

(b) A dispute between a contractor and subcontractor of any tier shall not constitute a dispute to which the State or any county is a party, and there is no right of action against the State or any county. The State and a county may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(c) Any public contract may include a provision for the retainage of a portion of the amount due under the contract to the contractor to ensure the proper performance of the contract; provided that:

(1) The sum withheld by the procurement officer from the contractor shall not exceed five per cent of the total amount due the contractor and that, after fifty per cent of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided further that if progress is not satisfactory, the procurement officer may continue to withhold, as retainage, sums not exceeding five per cent of the amount due the contractor; and

(2) The retainage shall not include sums deducted as liquidated damages from moneys due or that may become due the contractor under the contract.

(d) Where a subcontractor has provided evidence to the contractor of:

(1) A valid performance and a payment bond for the project that is acceptable to the contractor and executed by a surety company authorized to do business in this State;

(2) Any other bond acceptable to the contractor; or

(3) Any other form of collateral acceptable to the contractor,

the retention amount withheld by the contractor from its subcontractor shall be not more than the same percentage of retainage as that of the contractor. This subsection shall also apply to the subcontractors who subcontract work to other subcontractors.

(e) This section shall not be construed to impair the right of a contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that:

(1) Permit the contractor or subcontractor to retain, without cause, a specified percentage of no more than ten per cent of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract, without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond, subject however, to the limitations of subsection (d); and

(2) Permit the contractor or subcontractor to make a determination that part or all of the subcontractor's payment request may be withheld by the procurement officer in accordance with the subcontract agreement, without incurring any obligation to pay interest or a late payment penalty if a written notice of any

withholding is issued to a subcontractor, with a copy to the procurement officer, specifying the following:

- (A) The amount to be withheld;
- (B) The specific causes for the withholding under the terms of the subcontract; and
- (C) The remedial actions to be taken by the subcontractor to receive payment of the amounts withheld.

(f) A contractor may not request payment from the procurement officer of any amount withheld or retained in accordance with subsection (e) until such time as the contractor has determined and certified to the procurement officer that the subcontractor is entitled to the payment of such amount.

(g) The provisions of this section shall not be construed to require payment to subcontractors of retainage released to a contractor pursuant to an agreement entered into with the procurement officer meeting the requirements of section 103-32.2. [L 1976, c 167, pt of §1; am L 1999, c 149, §7; am L 2000, c 222, §2; am L 2006, c 291, §3; am L 2009, c 175, §§8, 14(2); am L 2010, c 107, §1]

#### **Note**

L Sp 1993, c 8, §54 purports to amend this section.

" **§103-32.2 Substitution of retainage.** Any other law to the contrary notwithstanding, any public contract may provide that the procurement officer may enter into an agreement with the contractor which will allow the contractor to withdraw from time to time the whole or any portion of the sum retained under section 103-32.1 upon depositing with the procurement officer any general obligation bond of the State or its political subdivisions with a market value not less than the sum to be withdrawn; provided that the procurement officer may require that the total market value of such bond be greater than the sum to be withdrawn. [L 1976, c 167, pt of §1; am L 1977, c 32, §1; am L 1999, c 149, §8]

" **§§103-33, 33.5, 34 to 39 REPEALED.** L Sp 1993, c 8, §§39 to 46.

" **§103-39.5 Construction, renovation, or repair of school facilities; county permit exemption.** Any contract for the construction, renovation, or repair of public school facilities shall be exempt from any requirement of a county that related off-site improvements be made by the contracting government

agency as a condition to the issuance of any permit. [L 1992, c 257, §1; am L 1999, c 149, §9]

" **§103-40 Federal-aid highway contracts.** Anything in section 103D-309 to the contrary notwithstanding, any federal-aid highway contract shall be binding and of force if the director of finance certifies that the director anticipates the accrual of an amount in the highway fund sufficient to pay the State's share of the contract before the performance contracted for is completed. [L 1965, c 147, §1; Supp, §9-36.5; HRS §103-40; gen ch 1985; am L Sp 1993, c 8, §9]

" **§§103-41 to 45 REPEALED.** L 1994, c 186, §21.

#### Note

L 1994, c 186, §§29 and 30 purport to amend §§103-42 and 103-43.

" **§103-45.5 REPEALED.** L 1997, c 352, §20.

" **§§103-46 to 48 REPEALED.** L 1994, c 186, §22.

#### Note

L 1994, c 186, §31 purports to amend §103-48.

" **§103-49 REPEALED.** L 1999, c 149, §31.

" **§103-50 Building design to consider needs of persons with disabilities; review fees.** (a) Notwithstanding any other law to the contrary, all plans and specifications for the construction of public buildings, facilities, and sites shall be prepared so that the buildings, facilities, and sites are accessible to and usable by persons with disabilities. The buildings, facilities, and sites shall conform to the Americans with Disabilities Act Accessibility Guidelines, Title 36 Code of Federal Regulations Part 1191, and the requirements of the Federal Fair Housing Amendments Act of 1988, as established in Title 24 Code of Federal Regulations Part 100, Subpart D, as adopted and amended by the disability and communication access board under chapter 348F.

(b) All state and county agencies subject to this section shall seek advice and recommendations from the disability and communication access board on any construction plans prior to commencing with construction.

(c) The disability and communication access board shall adopt rules pursuant to chapter 91 for the design of buildings, facilities, and sites, by or on behalf of the State and counties to effectuate the purposes of this section, except that the board, without regard to chapter 91, instead, may adopt federal amendments to the Americans with Disabilities Act Accessibility Guidelines, Title 36 Code of Federal Regulations Part 1191.

(d) The disability and communication access board may approve a site-specific alternate design when an alternate design provides equal or greater access.

(e) The disability and communication access board shall charge a review fee for services rendered pursuant to section 348F-3. The review fees shall be four-tenths of one per cent for the first \$500,000 of the estimated construction cost plus two-tenths of one per cent of the estimated construction costs greater than \$500,000 up to and including \$2,000,000 plus two one-hundredths of one per cent of the estimated construction costs over \$2,000,000 except as follows:

- (1) The minimum review fee for plans and specifications subject to accessibility guidelines under this section shall be \$200;
- (2) The disability and communication access board may limit the maximum review fee for plans and specifications of infrastructure projects or projects managed by private nonprofit entities to \$3,000; and
- (3) There shall be a \$50 review fee for projects with plans and specifications that do not reflect any elements subject to accessibility guidelines under this section.

(f) All moneys collected as review fees shall be deposited into the disability and communication access board special fund established under section 348F-7.

(g) The disability and communication access board shall report to the legislature annually no later than twenty days prior to the convening of each regular session regarding the revenues collected under this section. The report shall include a summary of the number and types of plans reviewed and the amount of review fees collected from each state or county department or agency.

(h) For the purposes of this section:

"Infrastructure" or "infrastructure project" includes water, drainage, sewer, waste disposal and waste treatment systems, roads, and street lighting and projects relating to that infrastructure. Projects with significant work to accessible elements and spaces shall not be considered infrastructure projects.



"Public buildings, facilities, and sites" means buildings, facilities, sites, and the infrastructure thereof that:

- (1) Are designed, constructed, purchased, or leased with the use of any state or county funds or federal funds administered by the State or a county;
- (2) House state or county programs, services, or activities that are intended to be accessed by the general public;
- (3) Are places of public accommodation or commercial facilities under the Americans with Disabilities Act, title 28 Code of Federal Regulations part 36, and are constructed on state or county lands; or
- (4) Are constructed on lands that will be transferred to the State or a county upon completion of construction. [L 1965, c 3, §2; Supp, §9-57; HRS §103-50; am L 1969, c 260, §1; am L 1989, c 382, §2; am L 1993, c 308, §2; am L 1996, c 163, §2; am L 1999, c 282, §3; am L 2002, c 42, §1; am L 2012, c 277, §2; am L 2015, c 45, §1]

" **§103-50.5 REPEALED.** L 1999, c 282, §8.

" **§103-51 REPEALED.** L 1994, c 186, §23.

" **§103-52 REPEALED.** L Sp 1993, c 8, §47.

" **§103-53 Contracts with the State or counties; tax clearances, assignments.** (a) All state and county officers and agents making contracts on behalf of the State or any county shall require, as a prerequisite to entering into these contracts, tax clearances from the director of taxation and the Internal Revenue Service to the effect that all tax returns due have been filed, and all taxes, interest, and penalties levied against the contractor or accrued under title 14 that are administered by the department of taxation and under the Internal Revenue Code have been paid. The director of taxation may waive the Internal Revenue Service tax clearance requirement if the director determines that it is in the best interest of the State.

(b) Notwithstanding the provisions under sections 40-57 and 40-58, if a contractor fails to timely file all tax returns and pay all taxes, interest, and penalties due to the State or Internal Revenue Service during the term of a contract, the state or county contracting officer or agent shall immediately assign any progress payment due to the contractor, if any (provided such payment is not subject to any restriction or encumbrance), to the State payable to the department of taxation or to the Internal Revenue Service to the credit of the

contractor, whichever the case may be; provided that the department of taxation may first offset its tax debt against the sum owed to the contractor. The state or county contracting officer or agent shall assign as many progress payments as necessary to cover the amount of the tax delinquency.

(c) All state and county contracting officers or agents shall withhold final payment of a contract until the receipt of tax clearances from the director of taxation and the Internal Revenue Service. Notwithstanding sections 40-57 and 40-58, if a contractor fails to provide the requisite tax clearances within six months of the completion date of the contract, the state or county contracting officer or agent shall first notify the department of taxation which in turn will notify the Internal Revenue Service, of amounts payable to the contractor on completed contracts. The department of taxation and the Internal Revenue Service shall, within thirty days, request the contracting officer or agent to offset the amount of taxes due against any payment due to the contractor until the tax debt is paid in full to the State or the Internal Revenue Service or both. No final bill or invoice from the contractor shall be required as a condition to the offset. Any remaining contract balance shall revert to the appropriation under which it was encumbered.

(d) Any assignment of a contract shall require the assignee, as a condition precedent to the assignment, to first obtain a bulk sales certificate if required under section 237-43, and present the certificate, or tax clearance as provided under subsection (a) if a bulk sales certificate is not required, to the state or county contracting officer or agent.

(e) This section shall not apply to:

- (1) Any procurement of less than \$25,000 or that is considered a small purchase under section 103D-305 and any state or county department contract of less than \$25,000;
- (2) Emergency purchases for the procurement of goods, services, or construction under section 103D-307 or an emergency or disaster under chapter 127A;
- (3) Grants disbursed by a state agency pursuant to chapter 42F or in accordance with standards provided by law as required by article VII, section 4, of the state constitution, or made by the counties pursuant to their respective charters or ordinances;
- (4) Contracts or agreements between government agencies;
- (5) Contracts or agreements to disburse funds:
  - (A) To make payments to or on behalf of public officials, officers, and employees for salaries,

- fringe benefits, professional fees, and reimbursements;
- (B) To satisfy obligations required to be paid by law, including fees, judgments, settlements, and other payments for resolving claims;
  - (C) To make refunds or return funds held by the State or county as trustee, custodian, or bailee;
  - (D) For entitlement programs, including public assistance, unemployment, and workers' compensation programs, established by state or federal law;
  - (E) For deposit, investment, or safekeeping, including sums to pay expenses related to their deposit investment, or safekeeping;
  - (F) For loans under government-administered loan programs; or
  - (G) To make periodic, recurring payments for utility services;
- (6) Rent for the use or occupation of the premises and facilities at Aloha Stadium, the convention center, or any other state or county large spectator events facility; and
  - (7) Contracts or agreements of the Hawaii health systems corporation and its regional system boards.

(f) This section shall not apply to a contractor if the department of taxation certifies that the contractor is in good standing under a plan in which delinquent taxes, interest, and penalties are being paid to the department of taxation (and the Internal Revenue Service, if applicable) in installments.

(g) Any officer or employee of any governmental agency who intentionally or knowingly violates any provision under this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(h) The provisions of subsections (a), (b), (c) and (d) shall not apply to the extent and during the period that the validity of the taxes, penalties, or interest is being contested in an administrative or judicial appeal with the department of taxation or Internal Revenue Service. [L 1939, c 213, §2; RL 1945, §354; RL 1955, §9-46; am L Sp 1959 2d, c 1, §16; HRS §103-53; gen ch 1985; am L 1996, c 314, §1; am L 1997, c 352, §3; am L 2004, c 216, §16; am L 2007, c 290, §15; am L 2014, c 96, §12 and c 111, §5]

### **Attorney General Opinions**

Tax clearance required even in cases of personal service contracts not admitting of competition. Att. Gen. Op. 62-14.

"Political subdivision" does not include redevelopment agencies created under chapter 53. Att. Gen. Op. 62-14.

### Case Notes

Claims owing to assignee are recognized. 39 H. 308.

" **§§103-53.5, 54 REPEALED.** L 1999, c 149, §§32, 33.

" **§103-55 Wages, hours, and working conditions of employees of contractors performing services.** (a) Before any offeror enters into a contract to perform services in excess of \$25,000 for any governmental agency, the offeror shall certify that the services to be performed will be performed under the following conditions:

Wages. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work.

Compliance with labor laws. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

(b) No contract to perform services for any governmental contracting agency in excess of \$25,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of contract to perform services shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Final payment of a contract or release of bonds or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected.

It shall be the duty of the governmental contracting agency awarding the contract to perform services in excess of \$25,000 to enforce this section.

(c) This section shall apply to all contracts to perform services in excess of \$25,000, including contracts to supply ambulance service and janitorial service.

This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel.
- (2) Contracts for supplies, materials, or printing.
- (3) Contracts for utility services.
- (4) Contracts to perform personal services under paragraphs (2), (3), (12), and (15) of section 76-16, paragraphs (7), (8), and (9) of section 46-33, and paragraphs (7), (8), and (12) of section 76-77.
- (5) Contracts for professional services.

- (6) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions.
- (7) Contracts to provide transportation services for school children.
- (8) Contracts with nonprofit institutions. [L 1907, c 98, §1; am L 1915, c 9, §1; am L 1917, c 194, §1; am imp L 1919, c 218, §1; RL 1925, §178; am L 1925, c 165, §1; am L 1929, c 86, §1; am L 1932 2d, c 36, §1; RL 1935, §92; am L 1937, c 34, §1; RL 1945, §362; RL 1955, §9-48; am L 1965, c 247, §1; HRS §103-55; am L 1975, c 41, §1; am L 1984, c 95, §1; am L 1985, c 73, §1; am L 1999, c 149, §10; am L 2013, c 258, §2]

#### Note

In subsection (c)(4), reference to "paragraphs (2), (3), (12), and (15) of section 76-16" are to paragraphs under subsection (b) of that section.

" **[\$103-55.5] Wages and hours of employees on public works construction contracts.** (a) Before any bidder or offeror enters into a contract for construction of a public work project in excess of \$2,000, which is subject to chapter 104, the bidder or offeror shall affirm the bidder's or offeror's intent to comply with the requirements of chapter 104 by certifying that:

- (1) Individuals engaged in the performance of the contract on the job site shall be paid:
  - (A) Not less than the wages that the director of labor and industrial relations shall have determined to be prevailing for corresponding classes of laborers and mechanics employed on public works projects; and
  - (B) Overtime compensation at one and one-half times the basic hourly rate plus fringe benefits for hours worked on Saturday, Sunday, or a legal holiday of the State or in excess of eight hours on any other day; and
- (2) All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety shall be fully complied with.

(b) No contract for construction of any public work project in excess of \$2,000 shall be granted unless all the conditions of this section are met.

(c) It shall be the duty of the governmental contracting agency awarding the contract for construction of a public work

project in excess of \$2,000 to enforce this section. [L 2002, c 215, §2]

### **Cross References**

Employment of state residents on construction procurement contracts, see chapter 103B.

" **[§103-55.6] Public works construction; apprenticeship agreement.** (a) A governmental body, as defined in section 103D-104, that enters into a public works contract under this chapter having an estimated value of not less than \$250,000, shall decrease the bid amount of a bidder by five per cent if the bidder is a party to an apprenticeship agreement registered with the department of labor and industrial relations for each apprenticeable trade the bidder will employ to construct the public works, and in conformance with chapter 372. The lowest total bid, taking the preference into consideration, shall be awarded the contract unless the solicitation provides for additional award criteria. The contract amount awarded, however, shall be the amount of the price offered, exclusive of the preference.

(b) For purposes of subsection (a), in determining whether there is conformance with chapter 372, the procurement officer shall consider the actual number of apprentices enrolled in and the annual number of graduates of the apprenticeship program.

(c) At the time of submission of a competitive sealed bid or a competitive sealed proposal by a bidder, the bidder shall furnish written proof of being a party to a registered apprenticeship agreement for each apprenticeable trade the bidder will employ to construct the public works and, if awarded the contract, shall continue to certify monthly in writing that the bidder is a party to a registered apprenticeship agreement for each apprenticeable trade the bidder will employ to construct the public works for the entire duration of the bidder's work on the project. This subsection shall be deemed to be incorporated into a public works contract. A bidder who is awarded a contract shall be subject to the following sanctions if, after commencement of work, the bidder at any time during the construction is no longer a party to a registered apprenticeship agreement for each apprenticeable trade the bidder will employ to construct the public works:

- (1) Temporary or permanent cessation of work on the project, without recourse to breach of contract claims by the bidder; provided that the governmental body shall be entitled to restitution for nonperformance or liquidated damages, as appropriate; or

(2) Proceedings to debar or suspend under section 103D-702.

(d) For purposes of this section, "bidder" means an entity that submits a competitive sealed bid under section 103D-302 or submits a competitive sealed proposal under section 103D-303. [L Sp 2009, c 17, §1]

#### **Cross References**

Employment of state residents on construction procurement contracts, see chapter 103B.

" **§§103-56 to 60 REPEALED.** L 1999, c 149, §§34 to 38.

**"PART III. POLLUTION CONTROL--REPEALED**

**§103-61 REPEALED.** L 1999, c 149, pt of §40.

**"[PART IV. ADDITIONAL PROCUREMENT PROCEDURES]**

**§103-71 REPEALED.** L 1999, c 149, §39.

#### **Cross References**

For new provisions on energy efficiency through life cycle costing, see §103D-410.

" **§103-72 Transcription of instructional materials.**

Contracts for the procurement of instructional materials shall include a provision whereby the State has the right to transcribe and reproduce the material in braille, large print, recordings, or other media for the use of physically-disabled students, including the visually impaired, unable to use the material in conventional print and form. Such right shall include the right to make those corrections, revisions, and other modifications as may be necessary. [L 1987, c 358, §1; am L 1999, c 149, §11]

**"PART V. PRODUCTS AND SERVICES OF  
HANDICAPPED INDIVIDUALS--REPEALED**

**§§103-81 to 83 REPEALED.** L 1999, c 149, pt of §40.