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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. Chapter 103D, Hawaii Revised Statutes, is  
2 amended by adding to part III a new section to be appropriately  
3 designated and to read as follows:

4           "§103D- Alternative procurements. (a) A procuring  
5 agency may select an alternative procurement method when the  
6 alternative procurement method is made part of a federal  
7 statute, federal regulation, federal special experimental, or  
8 demonstration project, or by federal approval of the alternative  
9 procurement method.

10           (b) The head of a purchasing agency shall determine in  
11 writing that it is neither practicable nor advantageous to the  
12 State to procure using the other methods in section 103D-301  
13 before selecting the use of the alternative procurement method.

14           (c) Documentation of the federal statute, federal  
15 regulation, federal special experimental, or federal  
16 demonstration project, or the federal approval of the



1 alternative procurement method, shall be made part of the  
2 contract file."

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

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

7 (1) Solicited or entered into before July 1, 1994, unless  
8 the parties agree to its application to a contract  
9 solicited or entered into prior to July 1, 1994;

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

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

17 (B) To make payments to or on behalf of public  
18 officers and employees for salaries, fringe  
19 benefits, professional fees, or reimbursements;

20 (C) To satisfy obligations that the State is required  
21 to pay by law, including paying fees, permanent



1 settlements, subsidies, or other claims, making  
2 refunds, and returning funds held by the State as  
3 trustee, custodian, or bailee;

4 (D) For entitlement programs, including public  
5 assistance, unemployment, and workers'  
6 compensation programs, established by state or  
7 federal law;

8 (E) For dues and fees of organizations of which the  
9 State or its officers and employees are members,  
10 including the National Association of Governors,  
11 the National Association of State and County  
12 Governments, and the Multi-State Tax Commission;

13 (F) For deposit, investment, or safekeeping,  
14 including expenses related to their deposit,  
15 investment, or safekeeping;

16 (G) To governmental bodies of the State;

17 (H) As loans, under loan programs administered by a  
18 governmental body; and

19 (I) For contracts awarded in accordance with chapter  
20 103F;



- 1           (3) To procure goods, services, or construction from a  
2           governmental body other than the University of Hawaii  
3           bookstores, from the federal government, or from  
4           another state or its political subdivision;
- 5           (4) To procure the following [~~goods or~~] goods, services,  
6           or construction which are available from multiple  
7           sources but for which procurement by competitive means  
8           is either not practicable or not advantageous to the  
9           State:
- 10          (A) Services of expert witnesses for potential and  
11          actual litigation of legal matters involving the  
12          State, its agencies, and its officers and  
13          employees, including administrative quasi-  
14          judicial proceedings;
- 15          (B) Works of art for museum or public display;
- 16          (C) Research and reference materials including books,  
17          maps, periodicals, and pamphlets, which are  
18          published in print, video, audio, magnetic, or  
19          electronic form;
- 20          (D) Meats and foodstuffs for the Kalaupapa  
21          settlement;



- 1 (E) Opponents for athletic contests;
- 2 (F) Utility services whose rates or prices are fixed
- 3 by regulatory processes or agencies;
- 4 (G) Performances, including entertainment, speeches,
- 5 and cultural and artistic presentations;
- 6 (H) Goods and services for commercial resale by the
- 7 State;
- 8 (I) Services of printers, rating agencies, support
- 9 facilities, fiscal and paying agents, and
- 10 registrars for the issuance and sale of the
- 11 State's or counties' bonds;
- 12 (J) Services of attorneys employed or retained to
- 13 advise, represent, or provide any other legal
- 14 service to the State or any of its agencies, on
- 15 matters arising under laws of another state or
- 16 foreign country, or in an action brought in
- 17 another state, federal, or foreign jurisdiction,
- 18 when substantially all legal services are
- 19 expected to be performed outside this State;
- 20 (K) Financing agreements under chapter 37D; and



1 (L) Any other [~~goods or~~] goods, services, or  
2 construction which the policy board determines by  
3 rules or the chief procurement officer determines  
4 in writing is available from multiple sources but  
5 for which procurement by competitive means is  
6 either not practicable or not advantageous to the  
7 State; and

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

10 (A) References in state or federal law to provisions  
11 of this chapter or a section of this chapter, or  
12 references to a particular requirement of this  
13 chapter; and

14 (B) Trade agreements, including the Uruguay Round  
15 General Agreement on Tariffs and Trade (GATT)  
16 which require certain non-construction and non-  
17 software development procurements by the  
18 comptroller to be conducted in accordance with  
19 its terms."

20 SECTION 3. Section 103D-301, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "**§103D-301 Methods of source selection.** Unless otherwise  
2 authorized by law, all contracts shall be awarded pursuant to  
3 the following sections, as applicable:

- 4           (1) Section 103D-302 (Competitive sealed bids);  
5           (2) Section 103D-303 (Competitive sealed proposals);  
6           (3) Section 103D-304 (Professional services procurement);  
7           (4) Section 103D-305 (Small purchases);  
8           (5) Section 103D-306 (Sole source procurement); ~~and~~  
9           (6) Section 103D-307 (Emergency procurements) ~~[-]~~; and  
10          (7) Section 103D- (Alternative procurements)."

11          SECTION 4. Section 103D-405, Hawaii Revised Statutes, is  
12 amended by amending subsection (d) to read as follows:

13          "(d) Outside contractors may be utilized to prepare  
14 specifications and work statements in the development of a  
15 solicitation. Contractors paid for those services shall be  
16 precluded from bidding on or receiving a contract when they  
17 participated in ~~[any way in]~~ the development of the solicitation  
18 package or any resulting contract ~~[-]~~, unless the chief  
19 procurement officer determines in writing that it is in the best  
20 interest of the State and authorizes a waiver."



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

3 SECTION 6. This Act shall take effect on July 1, 2112.





**Report Title:**

Methods of Source Selection; Alternative Procurement; and  
Government Services

**Description:**

Amends chapter 103D, HRS, to add to part III a new section allowing an alternative procurement method when the federal government provides for or approves the alternative procurement method, and the head of the purchasing agency makes a written determination that it is neither practicable nor advantageous to use the existing statutory procurement methods. Amends sections 103D-102(b)(4) and 103D-102(b)(4)(L), HRS, to exempt certain construction procurement from the Hawaii Public Procurement Code when it is neither practicable nor advantageous to the State. Amends section 103D-301, HRS, methods of source selection, to add the alternative procurement method. Amends section 103D-405, HRS, to allow the Chief Procurement Officer to provide a waiver for certain outside contractors that participated in the development of a solicitation package that would otherwise be precluded from bidding on or receiving a contract. Takes effect 7/1/2112. (SD1)

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