

ACT 29

H.B. NO. 2858-74

A Bill for an Act Relating to Certification as to Availability of Funds on Contracts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 103-39, Hawaii Revised Statutes, is amended to read:

“Sec. 103-39 Contract not binding unless appropriation available. No such contract shall be binding or of any force unless the comptroller of the State or the director of finance of the county as the case may be, indorses thereon his certificate that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the contract; provided that this section shall not apply to any price-term, open-end, or requirements contracts under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded.

Notwithstanding the requirement for certification set forth above, certification of a portion of the total funds required for a contract may be permitted in the following instances:

- (1) When an immediate call for tenders will result in significantly more favorable contract terms and conditions to the State or county agency than a call for tenders made at a later date; or
- (2) When an extension of the contract period beyond the period permitted by currently available funds will (a) significantly reduce the amounts of the periodic payments to be made by a State or county agency, or (b) result in significantly more favorable contract terms

and conditions to the State or county agency, or (c) promote competition among qualified bidders and attract qualified bidders who otherwise may be precluded from bidding.

Provided, such certification for partial funding shall be permitted only if the comptroller of the State or the director of finance of a county, as the case may be, certifies either that there exists substantial assurance that the necessary funds will be available for the payments set forth in the contract or that special fund revenues will be sufficient to cover the cost of the contract.

In all cases of certification for partial funding, the contract and the certificate shall state that availability of funds in excess of the amount certified as available shall be contingent upon future appropriations or special fund revenues. All contracts partially funded shall be enforceable only to the extent to which funds have been certified as available.

In any contract involving not only local funds but supplemental funds from the federal government, this section shall be applicable only to that portion of the contract price involved in the contract as is payable out of local funds. As to such portion of the contract price as is expressed in the contract to be payable out of federal funds, such contract shall be construed to be an agreement to pay such portion to the contractor, only out of federal funds to be received from the federal government when the federal funds are so received, and shall not be construed as a general agreement to pay such portion at all events out of any funds other than those which are received from the federal government. This paragraph shall be liberally construed so as not to hinder or impede the State or any county in contracting for any project involving financial aid from the federal government.”

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 23, 1974.)

*Edited accordingly.