
A BILL FOR AN ACT

RELATING TO GOVERNMENT.

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

1 SECTION 1. The legislature finds that the enactment of the
2 American Recovery and Reinvestment Act of 2009, Pub. L. No.
3 111-5, envisioned by President Obama as money going "out the
4 door immediately," will require expedited procedures to allow
5 the State to take full advantage of funding from the federal
6 stimulus plan to address, at the earliest practicable time, the
7 programs, services, and benefits needed by the people of Hawaii.

8 The legislature further finds that in these times of
9 economic turmoil, this Act would be instrumental in bringing, as
10 soon as possible, additional financial assistance and other
11 social services to Hawaii residents who have been affected by
12 the current economic circumstances as well as improving and
13 expanding benefits to the neediest individuals and families in
14 Hawaii.

15 The purpose of this Act is to provide temporary exemptions
16 from statutes relating to procurement, rulemaking, and
17 employment to allow the State to expedite the implementation or

1 expansion of programs, services, and benefits authorized by the
2 American Recovery and Reinvestment Act of 2009. It is not the
3 intent of the legislature to provide permanent exemptions to the
4 relevant statutes, and this Act shall be applied only to
5 expedite the expenditure of federal funds authorized in the
6 American Recovery and Reinvestment Act of 2009, or to expending
7 the matching state funds, if any, required to access the federal
8 funding from the American Recovery and Reinvestment Act of 2009.

9 SECTION 2. (a) To the extent not covered by any
10 exemptions adopted by the procurement policy board or the
11 respective chief procurement officers, and any law to the
12 contrary notwithstanding, including chapter 103D and chapter
13 103F, Hawaii Revised Statutes, contracts for goods, services,
14 construction, or health and human services using federal funds
15 authorized by the American Recovery and Reinvestment Act of
16 2009, and matching state funds, if any, required to access the
17 federal funding in the American Recovery and Reinvestment Act of
18 2009, shall be subject to the following requirements:

- 19 (1) Procurements of less than \$150,000 for goods and
20 services or health and human services, and
21 procurements of less than \$250,000 for construction,
22 shall be based on specifications and no less than

1 three written quotes shall be solicited. Only vendors
2 that supply the goods, services, construction, or
3 health and human services shall be solicited and
4 considered to meet the minimum quotation requirements.
5 Considering the criteria, including but not limited to
6 quality, warranty, and delivery, award shall be made
7 to the lowest responsive and responsible offeror.
8 When award to the lowest responsive and responsible
9 offeror is not practicable, award shall be made to the
10 offeror whose quotation provides the best value to the
11 State. The purchasing agency shall include the
12 written determination for the selection in the
13 procurement file; and

- 14 (2) For procurements of \$150,000 or more for goods,
15 services, or health and human services, and
16 procurements of \$250,000 or more for construction,
17 purchasing agencies, with the approval of the head of
18 the purchasing agency, may issue a request for
19 interest to select a contractor or contractors. The
20 request for interest shall include but not be limited
21 to the following:

- 1 (A) Identification and purpose of the federal
2 funding;
- 3 (B) Target population or clients to be served;
- 4 (C) A description of the goods, services, health and
5 human services, or construction;
- 6 (D) The evaluation criteria and their relative
7 weights, including the relative importance of
8 price, for selecting a contractor or contractors;
- 9 (E) The format, if any, and procedure for submitting
10 responses to the request; and
- 11 (F) The deadline for submittal of written responses
12 to the request.

13 (b) The selection of a contractor or contractors shall be
14 based on the criteria established in the request for interest.
15 The relative priority to be applied to each evaluation factor
16 shall also be set out in the request for interest. Evaluation
17 factors not specified in the request for interest may not be
18 considered.

19 (c) The head of the purchasing agency shall designate a
20 committee consisting of a minimum of three persons with
21 sufficient and relevant education, training, and licenses or
22 credentials for each type of procurement. In designating the

1 members of the committee, the head of the purchasing agency
2 shall ensure the impartiality and independence of committee
3 members.

4 The committee shall review and evaluate all submissions,
5 including references, and considering the criteria established
6 in the request for interest, the committee shall determine the
7 lowest responsive and responsible offeror and provide that
8 information to the head of the purchasing agency. The head of
9 the purchasing agency shall award the contract or contracts
10 based upon the information provided by the committee.

11 (d) Except for awards of health and human services
12 contracts, a person aggrieved by an award of a contract pursuant
13 to this Act may protest a purchasing agency's failure to follow
14 procedures established by this Act. The protest shall be
15 submitted to the head of the purchasing agency, in writing,
16 within five working days after notice of the award. The head of
17 the purchasing agency, or a designee, may settle and resolve a
18 protest by one or more of the following means:

- 19 (1) Amending or canceling a request for interest;
20 (2) Terminating the contract that was awarded;
21 (3) Initiating a new process to award a contract;

1 (4) Declaring the contract void from the time of its
2 award; or

3 (5) Affirming the purchasing agency's contract award
4 decision.

5 In lieu of paragraphs (1) to (5), a protest may be resolved
6 by mutual agreement; provided that if the protest is not
7 resolved by mutual agreement, the head of the purchasing agency,
8 or a designee, shall issue a decision in writing within ten
9 working days of receipt of the protest. The decision shall
10 state the reasons for the action taken. A copy of the written
11 decision shall be mailed or otherwise furnished to the person
12 who initiated the protest, the person awarded the contract, and
13 to all other offerors not awarded the contract.

14 (e) For awards of health and human services contracts, the
15 decision of the head of the purchasing agency shall be final and
16 conclusive unless a person who is aggrieved by an award of a
17 contract submits a request for reconsideration to the chief
18 procurement officer within five working days of the receipt of
19 the written decision. The request shall contain a specific
20 statement of the factual and legal grounds upon which
21 reconsideration is sought. A request for reconsideration may
22 only be made to correct a purchasing agency's failure to comply

1 with the procedures of this Act and any applicable rules adopted
2 to implement this Act. The chief procurement officer may uphold
3 or overturn the previous decision of the head of the purchasing
4 agency. A decision by the chief procurement officer shall be
5 rendered within ten working days from receipt of the request for
6 reconsideration and shall be deemed final and conclusive. The
7 procedures and remedies provided for in this Act shall be the
8 exclusive means available to resolve the concerns of persons
9 aggrieved in connection with the award of a contract under this
10 subsection.

11 (f) The fact that a protest or a request for
12 reconsideration is filed shall not stay the award of any
13 contract made under this Act.

14 (g) A bidder, offeror, contractor, or provider, as
15 applicable, who commits fraud or misrepresentation in the
16 procurement of contracts or commits abuse in the expenditure of
17 public moneys, or both, shall be subject to debarment or
18 suspension under section 103D-702, Hawaii Revised Statutes, if
19 the contract or procurement is subject to chapter 103, 103D, or
20 103F, Hawaii Revised Statutes.

21 This subsection shall not be interpreted to absolve any
22 person from applicable criminal penalties.

1 For purposes of this subsection:

2 "Abuse in the expenditure of public moneys" means to:

3 (1) Fail to spend the public moneys on the contract; or

4 (2) Spend public moneys on the contract for a purpose
5 unrelated or tangentially related to the contract.

6 "Fraud" means providing incorrect, misleading, incomplete,
7 or materially untrue information.

8 SECTION 3. Sections 103-8.5, 103-53(a), and 103-55, Hawaii
9 Revised Statutes, shall not apply to contracts for goods,
10 services, construction, or health and human services using
11 federal funds authorized by the American Recovery and
12 Reinvestment Act of 2009, and matching state funds required to
13 access the federal funding in the American Recovery and
14 Reinvestment Act of 2009; provided that tax clearances from the
15 director of taxation and the Internal Revenue Service shall be
16 received prior to final payment certifying that all tax returns
17 due have been filed, and all taxes, interest, and penalties
18 levied against the contractor or accrued under title 14 of the
19 Hawaii Revised Statutes, that are administered by the department
20 of taxation and under the Internal Revenue Code have been paid.

21 SECTION 4. When rules are required to implement new or
22 expanded programs, services, or benefits authorized or funded by

1 the American Recovery and Reinvestment Act of 2009, the
2 responsible agency may issue interim rules by adoption and
3 filing with the lieutenant governor, and posting the interim
4 rules on the lieutenant governor's website. Interim rules
5 adopted pursuant to this Act shall be exempt from the
6 requirements of chapter 91, Hawaii Revised Statutes, and shall
7 take effect upon filing with the lieutenant governor. The
8 interim rules shall be effective only through December 31, 2010.
9 For any new or expanded programs, services, or benefits that
10 have been implemented under interim rules to continue in effect
11 beyond December 31, 2010, the responsible agency shall adopt
12 rules in conformance with all the requirements of chapter 91,
13 Hawaii Revised Statutes.

14 SECTION 5. The expenditure ceiling placed on the use of
15 temporary assistance for needy families program funds in the
16 Supplemental Appropriations Act of 2008, and any other
17 expenditure limits placed on the use of temporary assistance for
18 needy families program funds, shall be raised or waived to the
19 extent necessary for the department of human services to utilize
20 the funds provided under the American Recovery and Reinvestment
21 Act of 2009, up to the amount actually provided to the State in
22 fiscal year 2009.

1 SECTION 6. This Act shall take effect upon its approval
2 and shall be repealed on June 30, 2009.

Report Title:

American Recovery and Reinvestment Act of 2009; Expedite
Implementation

Description:

Creates temporary exemptions in procurement, rule making, and
public employment statutes for programs, services, and benefits
using funds allocated to the State by the American Recovery and
Reinvestment Act of 2009. (SD1)