
A BILL FOR AN ACT

RELATING TO STATE CONTRACTS.

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

1 SECTION 1. Section 103D-702, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§103D-702 Authority to debar** ~~[or suspend]~~. (a) After
4 reasonable notice to the person involved and reasonable
5 opportunity for that person to be heard, the chief procurement
6 officer, after consultation with the using agency and the
7 attorney general or corporation counsel, ~~[may]~~ shall debar a
8 person for cause from consideration for award of all public
9 contracts and from performance on any public contract. The
10 serious nature of debarment ~~[and suspension]~~ requires that these
11 sanctions be imposed only in the public interest for a
12 governmental body's protection and not for the purpose of
13 punishment. An agency shall impose debarment ~~[or suspension]~~ to
14 protect a governmental body's interests and only for cause and
15 in accordance with this section. The debarment period shall not
16 exceed three years. ~~[The same officer, after consultation with~~
17 ~~the using agency and the attorney general or corporation~~
18 ~~counsel, may suspend a person from consideration for award of~~



1 ~~all public contracts and from performance on any public contract~~
2 ~~if there is probable cause for debarment. The suspension period~~
3 ~~shall not exceed three months.]~~ The authority to debar [~~or~~
4 ~~suspend~~] shall be exercised in accordance with the procedures
5 prescribed by rules adopted by the policy board and shall be
6 applied only to causes, convictions, and violations under
7 subsection (b) after the effective date of the rules adopted by
8 the policy board.

9 (b) The causes for debarment [~~or suspension include the~~
10 ~~following~~] shall be as follows:

11 (1) Conviction for commission of a criminal offense as an
12 incident to obtaining or attempting to obtain a public
13 or private contract or subcontract, or in the
14 performance of the contract or subcontract;

15 (2) Conviction under state or federal statutes relating to
16 embezzlement, theft, forgery, bribery, falsification
17 or destruction of records, receiving stolen property,
18 or any other offense indicating a lack of business
19 integrity or business honesty which currently,
20 seriously, and directly affects responsibility as a
21 contractor;



- 1 (3) Conviction under state or federal antitrust statutes
- 2 arising out of the submission of bids or proposals;
- 3 (4) Violation of contract provisions, as set forth below,
- 4 of a character that is regarded by the chief
- 5 procurement officer to be so serious as to justify
- 6 debarment action:
 - 7 (A) Deliberate failure without good cause to perform
 - 8 in accordance with the specifications or within
 - 9 the time limit provided in the contract; or
 - 10 (B) A recent record of failure to perform or of
 - 11 unsatisfactory performance in accordance with the
 - 12 terms of one or more contracts; provided that
 - 13 failure to perform or unsatisfactory performance
 - 14 caused by acts beyond the control of the
 - 15 contractor shall not be considered to be a basis
 - 16 for debarment;
- 17 (5) Any other cause the chief procurement officer
- 18 determines to be so serious and compelling as to
- 19 affect responsibility as a contractor, including
- 20 debarment by another governmental entity for any cause
- 21 listed in the rules of the policy board; and



1 (6) Violation of the ethical standards set forth in
 2 chapter 84 and its implementing rules, or the charters
 3 and ordinances of the several counties and their
 4 implementing rules.

5 ~~[(c) The existence of a cause for debarment does not~~
 6 ~~necessarily require that a contractor be debarred. The~~
 7 ~~seriousness of a contractor's acts or omissions and any remedial~~
 8 ~~measure or mitigating factors shall be considered in making any~~
 9 ~~debarment decision. Before arriving at any debarment decision,~~
 10 ~~the chief procurement officer shall consider factors such as the~~
 11 ~~following:~~

12 ~~(1) Whether the contractor had effective standards of~~
 13 ~~conduct and internal control systems in place at the~~
 14 ~~time of the activity constituting cause for debarment~~
 15 ~~or had adopted those procedures prior to any~~
 16 ~~government investigation of the activity cited as the~~
 17 ~~cause for debarment;~~

18 ~~(2) Whether the contractor brought the activity cited as~~
 19 ~~the cause for debarment to the attention of the~~
 20 ~~appropriate government agency in a timely manner;~~

21 ~~(3) Whether the contractor fully investigated the~~
 22 ~~circumstances surrounding the cause for debarment and~~



- 1 ~~made the result of the investigation available to the~~
- 2 ~~chief procurement officer;~~
- 3 ~~(4) Whether the contractor cooperated fully with~~
- 4 ~~government agencies during the investigation and any~~
- 5 ~~court or administrative action;~~
- 6 ~~(5) Whether the contractor has paid or has agreed to pay~~
- 7 ~~all criminal, civil, and administrative liability for~~
- 8 ~~improper activity, including any investigative or~~
- 9 ~~administrative costs incurred by the governmental~~
- 10 ~~body, and has made or has agreed to make full~~
- 11 ~~restitution;~~
- 12 ~~(6) Whether the contractor has taken appropriate~~
- 13 ~~disciplinary action against the individuals~~
- 14 ~~responsible for the activity constituting the cause~~
- 15 ~~for debarment;~~
- 16 ~~(7) Whether the contractor has implemented or agreed to~~
- 17 ~~implement remedial measures, including any identified~~
- 18 ~~by the governmental body or the chief procurement~~
- 19 ~~officer;~~
- 20 ~~(8) Whether the contractor has instituted or agreed to~~
- 21 ~~institute new or revised review and control procedures~~
- 22 ~~and ethics training programs;~~

- 1 ~~(9) Whether the contractor has had adequate time to~~
- 2 ~~eliminate the circumstances within the contractor's~~
- 3 ~~organization that led to the cause for debarment; and~~
- 4 ~~(10) Whether the contractor's management recognizes and~~
- 5 ~~understands the seriousness of the misconduct giving~~
- 6 ~~rise to the cause for debarment and has implemented~~
- 7 ~~programs to prevent its recurrence.~~

8 ~~The existence or nonexistence of any mitigating factors or~~
9 ~~remedial measures such as those set forth in this subsection~~
10 ~~shall not necessarily be determinative of a contractor's present~~
11 ~~responsibility. If a cause for debarment exists, the contractor~~
12 ~~has the burden of demonstrating to the satisfaction of the chief~~
13 ~~procurement officer the contractor's present responsibility and~~
14 ~~that debarment is not necessary.~~

15 ~~(d)]~~ (c) The chief procurement officer shall issue a
16 written decision to debar [~~or suspend~~]. The decision shall:

- 17 (1) State the reasons for the action taken; and
- 18 (2) Inform the debarred [~~or suspended~~] person involved of
- 19 the person's rights to review as provided in this
- 20 part.



1 ~~[(e)]~~ (d) A copy of the decision under subsection ~~[(d)]~~
2 (c) shall be mailed or otherwise furnished immediately to the
3 debarred ~~[or suspended]~~ person and any other party intervening.

4 ~~[(f)]~~ (e) The chief procurement officer shall transmit a
5 copy of the decision to debar ~~[or suspend]~~ a contractor to the
6 state procurement office, which shall distribute a list to all
7 governmental bodies containing the names of persons or firms
8 debarred ~~[or suspended]~~ from consideration for award of all
9 public contracts and from performance on any public contract.

10 ~~[(g) Upon written notification under subsection (f), the~~
11 ~~chief procurement officer shall make a written determination~~
12 ~~whether to allow the debarred or suspended person or firm to~~
13 ~~continue performance on any contract awarded prior to the~~
14 ~~effective date of the debarment or suspension.~~

15 ~~(h)]~~ (f) A decision under subsection ~~[(d)]~~ (c) shall be
16 final and conclusive, unless the debarred ~~[or suspended]~~ person
17 commences an administrative proceeding under section 103D-709."

18 SECTION 2. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 3. This Act shall take effect on July 1, 2014.



Report Title:

Contracts; Prohibited; Criminal Offenses

Description:

Requires the Chief Procurement Officer to debar an offerer for up to three years for certain crimes, contract violations, or ethical violations. Effective July 1, 2014. (HB2442 HD1)

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

