
A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 SECTION 1. The legislature finds that creative problem
2 solving is necessary to address the growing concerns of the
3 State's deficit. Hawaii is responsible for unfunded liabilities
4 totaling billions of dollars. Like many states, Hawaii must
5 balance its budget while managing the demands of infrastructure
6 maintenance and public service needs. Budget shortfalls result
7 in postponed maintenance and reduced social services despite a
8 growing population driving the demand for services and adding
9 stress to public infrastructure.

10 The legislature finds that the State's process of acquiring
11 goods and services must be agile to accommodate circumstances
12 where other than full competition is necessary to address a
13 unique need, such as local food purchasing or where
14 nontraditional procurement practices, such as public-private
15 partnerships, can help government maintain infrastructure,
16 provide services, and operate more efficiently.

17 A public-private partnership is a contractual agreement
18 between a public agency and a private sector entity where skills



1 and assets of each sector are combined to deliver services to
2 the public. Both entities share in the risks and rewards of the
3 venture. A public-private partnership is not privatization of a
4 government function. The partnership provides for a level of
5 public control and oversight of operations not typical of
6 privatization.

7 While public-private partnerships are widely employed
8 around the world, only five states have adopted comprehensive
9 legislation authorizing governmental entities to contract with
10 private partners to design, build, finance, operate, and
11 maintain public facilities. Public-private partnerships have
12 been created to address social infrastructure, transportation,
13 water treatment, energy, and financial management concerns. The
14 private sector contributes management efficiency, technology,
15 cash flow management, and personnel development to complement
16 the government's legal authority, capital resources, procurement
17 policies, and broad perspective.

18 The purpose of this Act is to provide the State greater
19 flexibility in procurement by establishing a process for special
20 innovative procurement and generating a framework for public-
21 private partnerships in Hawaii.



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

4 "§103D- Special innovative procurement. (a) Contracts
5 for supplies, services, professional services, or construction
6 may be awarded with other than full competition using a special
7 innovative procurement process in accordance with this section
8 and procedures set forth in rules adopted by the procurement
9 policy board. The special innovative procurement process
10 authorized by this section shall only be used when the chief
11 procurement officer determines in writing that it is
12 advantageous to the State to use the process for procurement of
13 new or unique requirements of the State, new technologies, or to
14 achieve best value.

15 (b) The head of the purchasing agency shall submit a
16 procurement plan developed pursuant to this section to the
17 attorney general for review and approval as to form before
18 issuing the notice required under subsection (c).

19 (c) Notice of the invitation for bids shall be given in
20 the same manner as provided in section 103D-302(c).



1 (d) Nothing in this section shall preclude the adoption of
2 rules providing for the use of bonuses instead of preferences in
3 a procurement of construction.

4 (e) A written determination of the basis for the
5 procurement and for the selection of the particular contractor
6 shall be included by the head of the purchasing agency in the
7 contract file, and a report shall be made by the head of the
8 purchasing agency at least annually describing all
9 determinations made since the last annual report. The report
10 shall be transmitted to the administrator of the state
11 procurement office who shall make the report publicly
12 available."

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

15 "**§103D-301 Methods of source selection.** Unless otherwise
16 authorized by law, all contracts shall be awarded pursuant to
17 the following sections, as applicable:

- 18 (1) Section 103D-302 (Competitive sealed bids);
19 (2) Section 103D-303 (Competitive sealed proposals);
20 (3) Section 103D-304 (Professional services procurement);
21 (4) Section 103D-305 (Small purchases);



- 1 (5) Section 103D-306 (Sole source procurement); [~~and~~]
- 2 (6) Section 103D-307 (Emergency procurements) [~~-~~]; and
- 3 (7) Section 103D- (Special innovative procurement)."

4 SECTION 4. (a) The procurement policy board shall draft
5 rules for special innovative procurements, including but not
6 limited to public-private partnership contracts.

7 (b) The rules for public-private partnerships shall
8 include but not be limited to the following:

- 9 (1) A requirement that a public-private partnership
10 contract include a long-term maintenance and
11 operations scope;
- 12 (2) Provisions that require a suitability test wherein a
13 centralized governmental entity with expertise in
14 public-private partnership delivery and financial
15 modeling compares the value of long-term leases to
16 existing project delivery models before issuing any
17 requests for qualifications or proposals, which would
18 be triggered after satisfaction of basic threshold
19 requirements for public-private partnerships;
- 20 (3) Provisions that require the government to have an
21 independent consultant or in-house expert in



1 facilities planning, design, and construction assess
2 the long-term projected needs of the government before
3 considering the use of a public-private partnership;
4 advise the government prior to solicitation; and
5 continue serving as advisor to the government
6 throughout the planning, design, and construction
7 phases;

8 (4) Comprehensive statutory guidelines that apply to all
9 state entities to provide a uniform, fair process that
10 enables private developers to properly assess the
11 risks and rewards of engagement;

12 (5) Provisions that encourage communication between design
13 professionals and the end user during the request for
14 proposals phase so the government end user is
15 empowered to provide direct, meaningful input to the
16 competitor design teams developing the proposed
17 designs; and

18 (6) Provisions that enable small businesses to compete.

19 (c) The procurement policy board shall report the draft
20 rules for public-private partnerships and any proposed



1 legislation to the legislature no later than twenty days prior
2 to the convening of the regular session of 2017.

3 SECTION 5. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$65,000 or so much
5 thereof as may be necessary for fiscal year 2015-2016 and the
6 same sum or so much thereof as may be necessary for fiscal year
7 2016-2017 for a temporary position within the department of
8 accounting and general services, not to exceed two years from
9 the effective date of this Act, with duties to include but not
10 be limited to assisting the procurement policy board in the
11 research and development of special innovative procurements and
12 public-private partnership rules.

13 The sums appropriated shall be expended by the department
14 of accounting and general services for the purposes of this Act.

15 SECTION 6. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 7. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 8. This Act shall take effect on July 1, 2050;
21 provided that section 5 shall take effect on July 1, 2050.



Report Title:

State Procurement Office; Special Innovative Procurement;
Public-private Partnerships; Procurement Policy Board; Rules;
Appropriation

Description:

Establishes the special innovative procurement process for procurement of supplies, services, professional services, and construction. Requires the procurement policy board to establish procedures for use of the special innovative procurement process. Requires the procurement policy board to develop draft rules regarding special innovative procurements, including public-private partnerships in Hawaii, and to report the draft rules and any proposed legislation to the 2017 legislature. Makes an appropriation to fund a temporary position to assist the procurement policy board in drafting rules. Effective 7/1/2050. (SD2)

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