

JAN 22 2016

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 in July 2015, the
2 auditor released report no. 15-09: "Procurement Examination of
3 the Department of Health: Lack of Procurement Controls Exposes
4 Health Department to Waste and Abuse," conducted pursuant to
5 section 23-4, Hawaii Revised Statutes, which requires the
6 auditor to conduct postaudits of the transactions, accounts,
7 programs, and performance of all departments, offices, and
8 agencies of the State and its political subdivisions.

9 The legislature further finds that the auditor's report
10 highlighted an example of a contract award that was renegotiated
11 at a price that was three hundred forty-five per cent higher
12 than the original bid amount. The same contract was then
13 amended three times, which resulted in a final contract amount
14 that was six hundred eleven per cent higher than the original
15 bid, as well as a reduction in the scope of work provided and a
16 one-year extension of the performance deadline.



1 The legislature further finds that a reform of procurement
2 law is necessary in light of the auditor's report.

3 The purpose of this Act is to protect the public's interest
4 in the procurement process by:

5 (1) Establishing a fair and reasonable pricing policy for
6 every contract action;

7 (2) Clarifying that contractors are required to submit
8 cost or pricing data and a certification of the
9 accuracy of the data for certain change orders and
10 contract modifications, even if the original contract
11 award did not require cost and pricing data; and

12 (3) Appropriating moneys to the state procurement office
13 for costs related to ensuring that agencies comply
14 with procurement law.

15 SECTION 2. Section 103D-312, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "~~§103D-312~~ ~~[Cost]~~ Fair and reasonable pricing policy; cost
18 or pricing data. (a) A procurement officer shall purchase
19 goods, services, and construction from responsible sources at
20 fair and reasonable prices. A procurement officer shall make a
21 written determination whether a price is fair and reasonable for



1 each contracting action, including change orders and contract
2 modifications that adjust prices. In establishing whether a
3 price is fair and reasonable, the procurement officer shall
4 obtain:

5 (1) Certified cost or pricing data for every contract to
6 which subsection (c) applies; and

7 (2) Other data as necessary to perform a cost or price
8 analysis of that data and determine a fair and
9 reasonable price, regardless of whether subsection (c)
10 applies to the contract.

11 (b) The policy board may adopt rules, pursuant to chapter
12 91, establishing an order of preference in the type of data
13 required under subsection (a) (2).

14 ~~[(a)]~~ (c) A contractor, except as provided in subsection
15 ~~[(e)],~~ (e), shall submit cost or pricing data and shall certify
16 that, to the best of the contractor's knowledge and belief, the
17 cost or pricing data submitted is accurate, complete, and
18 current as of a mutually determined specified date ~~[prior to]~~
19 before the date of:

20 (1) The pricing of any contract awarded by competitive
21 sealed proposals or pursuant to the sole source



1 procurement authority, where the total contract amount
2 is expected to exceed an amount established by rules
3 adopted by the policy board; or

4 (2) The pricing of any change order or contract
5 modification that is expected to exceed an amount
6 established by rules adopted by the policy board. The
7 requirement of this paragraph shall apply regardless
8 of whether the original contract award did not require
9 certified cost and pricing data.

10 ~~[(b)]~~ (d) Any contract, change order, or contract
11 modification under which a certificate is required shall contain
12 a provision that the price to the State, including profit or
13 fee, shall be adjusted to exclude any significant sums by which
14 the State finds that the price was increased because the
15 contractor furnished cost or pricing data that was inaccurate,
16 incomplete, or not current as of the date agreed upon between
17 the parties.

18 ~~[(e)]~~ (e) The requirements of this section, except for the
19 requirements of paragraph (c) (2), shall not apply to
20 ~~[contracts-]~~ original contract awards:



(1) Where the original contract price is based on adequate price competition;

(2) Where the original contract price is based on established catalog prices or market prices;

(3) Where the original contract prices are set by law or rule; or

(4) Where it is determined in writing in accordance with rules adopted by the policy board that the requirements of this section may be waived, and the reasons for the waiver are stated in writing[-];
provided that the requirements for price and costing data required under subsection (a)(2) shall not be waived without the approval of the chief procurement officer; provided further that the chief procurement officer shall not delegate this authority."

SECTION 3. Section 103D-318, Hawaii Revised Statutes, is amended to read as follows:

"[+] §103D-318 [+] **Finality of determinations.** The determinations required by sections 103D-302(g), 103D-303(a), 103D-303(g), 103D-306, 103D-307, 103D-310, [~~103D-312(e)~~], 103D-312(e), 103D-313, and 103D-314 shall be final and conclusive



1 unless they are clearly erroneous, arbitrary, capricious, or
2 contrary to law."

3 SECTION 4. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$54,000 or so much
5 thereof as may be necessary for fiscal year 2016-2017 for the
6 following activities related to procurement:

- 7 (1) Cost and pricing certification;
8 (2) Procurement planning and market research
9 certification;
10 (3) Template development and contract management items
11 guidance; and
12 (4) Contract management certification.

13 The sum appropriated shall be expended by the state
14 procurement office for the purposes of this Act.

15 SECTION 5. 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 6. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.



1 SECTION 7. This Act shall take effect on July 1, 2016;
2 provided that section 2 shall take effect on January 1, 2017.
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S.B. NO. 2545

Report Title:

Procurement; Cost or pricing data; Appropriation

Description:

Establishes a fair and reasonable pricing policy for all contract actions. Clarifies that contractors are required to submit and certify cost or pricing data for certain change orders and contract modifications, even if the original contract award did not require cost and pricing data. Appropriates moneys to the state procurement office.

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