

JAN 17 2025

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 SECTION 1. Section 103-55.6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§103-55.6[+] Public works construction; apprenticeship
4 agreement[-]; earned credit certificate; application; right to
5 audit records. (a) A governmental body, as defined in section
6 103D-104, that enters into a public works contract under this
7 chapter having an estimated value of not less than \$250,000,
8 shall ~~[decrease the bid amount of a bidder by five per cent if~~
9 ~~the bidder]~~ issue an earned credit certificate to any qualified
10 bidder who is a party to an apprenticeship agreement registered
11 with the department of labor and industrial relations for each
12 apprenticeable trade the bidder will ~~[employ]~~ utilize to
13 construct the public works, and in conformance with chapter 372.
14 ~~[The lowest total bid, taking the preference into consideration,~~
15 ~~shall be awarded the contract unless the solicitation provides~~
16 ~~for additional award criteria. The contract amount awarded,~~
17 ~~however, shall be the amount of the price offered, exclusive of~~



1 ~~the preference.]~~ The earned credit shall be calculated and
2 applied as a bid preference by the contractor for future public
3 works contract bids pursuant to subsection (b).

4 (b) Upon making a determination during the contract
5 closeout process that a contractor has successfully met the
6 applicable apprentice utilization criteria, the chief
7 procurement officer shall issue to the contractor an earned
8 credit certificate that evidences a five per cent earned credit
9 allocated to the contractor. The contractor may apply the
10 earned credit as a bid preference for any future bid for a
11 public works contract of an equal or greater estimated dollar
12 value. The earned credit certificate shall be valid for three
13 years from the date of issuance and shall not be applied towards
14 any public works contract bid after the expiration of that
15 period. The earned credit may be applied to multiple public
16 works contract bids submitted by the contractor during the
17 validity of the certificate; provided that:

18 (1) For bid evaluation purposes, the earned credit shall
19 not be applied to a bid concurrently with any other
20 bid preference; and



1 (2) If the contractor, taking into account its earned
2 credit, becomes the responsive and responsible bidder
3 with the lowest total bid for more than one
4 solicitation of bids advertised by a government
5 agency, the earned credit shall be applied to the bid
6 for the solicitation first advertised by the
7 government agency; provided further that if multiple
8 solicitations were advertised by the government agency
9 on the same date, the earned credit shall be applied
10 only to the bid for the public works contract with the
11 greatest estimated dollar value.

12 ~~(b)~~ (c) For purposes of subsection (a), in determining
13 whether there is conformance with chapter 372, the procurement
14 officer shall consider the actual number of apprentices enrolled
15 in and the annual number of graduates of the apprenticeship
16 program.

17 ~~(e)~~ (d) At the time of submission of a competitive
18 sealed bid or a competitive sealed proposal by a bidder, the
19 bidder shall furnish written proof of being a party to a
20 registered apprenticeship agreement for each apprenticeable
21 trade the bidder will ~~employ~~ utilize to construct the public



1 works and, if awarded the contract, shall continue to certify
 2 monthly in writing that the bidder is a party to a registered
 3 apprenticeship agreement for each apprenticeable trade the
 4 bidder will [~~employ~~] utilize to construct the public works for
 5 the entire duration of the bidder's work on the project. This
 6 subsection shall be deemed to be incorporated into a public
 7 works contract. A bidder who is awarded a contract shall be
 8 subject to the following sanctions if, after commencement of
 9 work, the bidder at any time during the construction is no
 10 longer a party to a registered apprenticeship agreement for each
 11 apprenticeable trade the bidder will [~~employ~~] utilize to
 12 construct the public works:

- 13 (1) Temporary or permanent cessation of work on the
 14 project, without recourse to breach of contract claims
 15 by the bidder; provided that the governmental body
 16 shall be entitled to restitution for nonperformance or
 17 liquidated damages, as appropriate; or
- 18 (2) Proceedings to debar or suspend under section
 19 103D-702.

20 [~~(d)~~] (e) The purchasing agency shall be entitled to audit
 21 and full access to the books and records of a contractor or any



1 subcontractor of a contractor who has been awarded a public
2 works contract utilizing an earned credit pursuant to this
3 section, to the extent that the books and records relate to the
4 contractor's compliance with this section as determined by the
5 chief procurement officer. Accurate and detailed books and
6 records shall be maintained by the contractor for a period of
7 three years from the date of final payment under the prime
8 contract and by the subcontractor for a period of three years
9 from the date of final payment under the subcontract. The
10 contractor shall also submit reports pertaining to its
11 compliance with this section, as required by the chief
12 procurement officer.

13 (f) For purposes of this section[7]:

14 "Bid preference" means an amount deducted from the contract
15 base bid to calculate the bid price to be used only to evaluate
16 the bid on a competitively bid construction project.

17 "Bidder" means an entity that submits a competitive sealed
18 bid under section 103D-302 or submits a competitive sealed
19 proposal under section 103D-303.

20 "Earned credit" means the percentage of the bid preference
21 allocated to a contractor upon the contractor's completion of a



1 public works project when the contractor has met or exceeded the
2 applicable goals for the utilization of apprentices performing
3 work on the project.

4 "Earned credit certificate" means a certificate issued by
5 the chief procurement officer evidencing the percentage of
6 earned credit a contractor has been awarded."

7 SECTION 2. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

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

10

INTRODUCED BY:





Report Title:

Procurement; Public Works Construction; Incentive to Utilize Apprentices; Bid Preference; Earned Credit; Certificate; Recordkeeping; Reports

Description:

Replaces the five per cent bid preference for bidders for a public works contract with an estimated value of \$250,000 or more, who is a party to an apprenticeship agreement registered with the Department of Labor and Industrial Relations with a five per cent earned credit that can be applied to certain future public works contract bids for a duration of three years after the chief procurement officer issues the earned credit certificate. Authorizes purchasing agencies to audit and have full access to the books and records of contractors or subcontractors relating to the contractor's compliance with requirements of the earned credit bid preference. Requires contractors and subcontractors to maintain relevant records for three years. Requires the contractor to submit reports as required by the Chief Procurement Officer.

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