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S.B. NO. 2434

A Bill for an Act Relating to Public Contracts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to broaden the bid deposit requirements for public contracts to include all credit union instruments so as to facilitate the bidding process.

In 1988, amendments to the bid deposit requirements for public contracts added share certificates as acceptable security for bid deposits. Other credit union instruments such as credit union cashier's checks, certified checks, and teller's checks were not included in the amendment solely because credit unions do not issue such instruments regularly. Credit unions are permitted to issue these instruments and are doing so with growing frequency because of the recognized security of these financial instruments.

The underlying purpose of the bid deposit statute is to ensure that bid deposits for public contracts are secure. The federally insured status of credit

unions provides this assurance of security. Therefore, all instruments issued by federally insured credit unions satisfy the objective of the State of Hawaii in specifying permissible deposit instruments for public contracts.

SECTION 2. Section 103-28, Hawaii Revised Statutes, is amended to read as follows:

“§103-28 Deposits of legal tender, etc., to accompany bid. All bids shall be accompanied by a deposit of legal tender or by a certificate of deposit, cashier’s check, or certified check on a bank [that is insured by the Federal Deposit Insurance Corporation,] or on a savings institution insured by the Federal [Savings and Loan] Deposit Insurance Corporation, or by a share certificate, cashier’s check, certified check, or teller’s check issued by a credit union insured by the National Credit Union Administration, in a sum not less than five per cent of the amount bid, payable at sight or unconditionally assigned to the officer advertising for tenders; provided that when the amount bid exceeds \$50,000, the legal tender, certificate of deposit, share certificate, cashier’s check, [or] certified check, or teller’s check shall be in a sum not less than \$2,500, plus two per cent of the amount in excess of \$50,000. Notwithstanding the foregoing, in solicitations for price-term, open-end, and requirements contracts a maximum deposit of \$2,500 shall apply; provided that a standing deposit of \$2,500 may be furnished to the comptroller and held by the comptroller for a period convenient to the bidder. During the period held by the comptroller, the standing deposit shall be sufficient for all bids submitted by the bidder for price-term, open-end, or requirements contracts. A certificate of deposit, share certificate, cashier’s check, [or] certified check, or teller’s check may be utilized only to a maximum of \$100,000.

A bid deposit for a bid requiring a deposit in excess of \$100,000 shall be in the form of legal tender or a surety bond conforming to the requirements of section 103-31.”

SECTION 3. Section 103-31, Hawaii Revised Statutes, is amended to read as follows:

“§103-31 Bond may be substituted for deposits, etc. In lieu of the deposit of legal tender, certificate of deposit, share certificate, cashier’s check [or], certified check, or teller’s check a bid may be accompanied by a surety bond executed to the officer calling for bids by the bidder as principal, and by any corporation organized for the purpose of becoming surety on bonds, authorized under the laws of the United States or of the State to act as surety, and doing business in the State under the laws of the United States or of the State, if a foreign corporation, and under the laws of the State, if a [Hawaiian] Hawaii corporation, as surety, in a penal sum of equal amount, conditioned upon the bidder entering into the contract and furnishing satisfactory security within ten days after the award or within [such] any further time as the officer may allow, if the bidder is awarded the contract.”

SECTION 4. Section 103-35, Hawaii Revised Statutes, is amended to read as follows:

“§103-35 Surety on bond; justification. A surety company authorized to do business under the laws of the State may be accepted as surety on the bond, whenever, in the opinion of the officer letting the contract, the rights of all parties in interest will be fully protected. If the surety or sureties on the bond, whether

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individual or corporate, is other than a surety company authorized to do business under the laws of the State, there shall be not more than four [such] sureties who shall severally justify in such amounts as, taken together, will aggregate the full amount of the bond; provided that in the case of [such] the other sureties the officer letting the contract shall require that the surety shall also severally deposit with the officer certified checks [or], certificates of deposit [(payable), or share certificates (unconditionally assigned or payable on demand or after such period as the officer may stipulate) or bonds, stocks, or other negotiable securities, or execute and deliver to the officer a deed or deeds of trust of real property, all of such character as shall be satisfactory to the officer, each surety to furnish [such] the security to the full cash value of one hundred per cent of the amount for which the surety shall so have justified; provided further that the comptroller or other awarding officer [may], in the comptroller's or officer's discretion, may waive the necessity of furnishing [such] the security, to any extent that the comptroller or officer may deem warranted, in cases where, upon an actual examination, the comptroller or officer is satisfied as to the financial responsibility of the proposed surety or sureties; provided that if there be but one personal surety the surety shall so justify for the full amount of the bond."

SECTION 5. Section 103-36, Hawaii Revised Statutes, is amended to read as follows:

"§103-36 Deposit of securities in lieu of surety. Any bidder to whom the contract is awarded may furnish a bond executed by the bidder alone, as principal, if in lieu of any surety or sureties, the bidder shall similarly furnish security in certified checks, certificates of deposit, share certificates, or other securities, as provided in section 103-35."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved April 23, 1990.)