

A Bill for an Act Relating to Public Contracts.

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

SECTION 1. The legislature finds that there is a need to improve and update the state's law relating to government procurement. Current findings in a study by the firm of Lallatin & Associates identified the need for immediate updating in the area of utilizing competitive sealed proposals as an alternate method to competitive sealed bidding. The legislature believes that the drafting of a comprehensive procurement code by the legislative reference bureau based on recommendations of the auditor will bring about economic benefits to the State as well as promote fair competition among all government suppliers.

The legislature further finds that requiring deposit instruments to be issued by appropriately insured banks, savings institutions, or credit unions ensures that bid deposits for public contracts are secure. The legislature further finds that, currently, only certificates of deposit, cashier's checks, or certified checks are accepted when drawn from federally insured banks or savings institutions. Similarly, only share certificates, cashier's checks, certified checks, or teller's checks are accepted from appropriately insured credit unions. The legislature believes that the addition of official bank checks to the list of acceptable bid instruments will serve to broaden the bid requirements for public contracts while maintaining the need for security.

SECTION 2. Section 102-6, Hawaii Revised Statutes, is amended to read as follows:

"§102-6 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, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check [on] accepted by, a bank [that is], savings institution, or credit union insured by the Federal Deposit Insurance Corporation or [by a share certificate, cashier's check, certified check, or teller's check issued by a credit union that is 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, 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.

A bid deposit for a bid requiring a deposit may be in the form of a surety bond conforming to the requirements of section 103-31."

SECTION 3. Section 102-8, Hawaii Revised Statutes, is amended to read as follows:

"§102-8 Bond may be substituted for deposits. In lieu of the [deposit of legal tender, certificate of deposit, share certificate, cashier's check, certified check, or teller's check,] deposits prescribed by section 102-6, 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 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 any further time as the officer may allow, if the bidder is awarded the contract.”

SECTION 4. Section 103-28, Hawaii Revised Statutes, is amended to read as follows:

“§103-28 Deposits of legal tender, etc., to accompany bid. [All] The comptroller shall determine on a case-by-case basis which bids shall be accompanied by a deposit of legal tender or by a certificate of deposit, share certificate, cashier’s check, treasurer’s check, teller’s check, or official check drawn by, or a certified check [on] accepted by, a bank [or on a], savings institution, or credit union insured by the Federal 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, 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 a 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, treasurer’s check, teller’s check, official 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 5. 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, certified check, or teller’s check] deposits prescribed by section 103-28, 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 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 any further time as the officer may allow, if the bidder is awarded the contract.”

SECTION 6. The office of the auditor shall conduct a study to provide information and recommendations to enable the legislative reference bureau to draft proposed legislation to enact a comprehensive procurement policy for the

State to be called the "Hawaii Procurement Code". The auditor shall address all recommendations specified in the Lallatin and Associates study of procurement practices in the State which was completed in 1990. The code shall be intended to serve as a comprehensive procurement code for all state agencies purchasing items, goods, or services or engaging in construction with state funds. In addition to these duties, the auditor shall:

- (1) Review the American Bar Association Model Procurement Code, Council on State Government's and National Organization Of State Purchasing Agents' State and Local Government Purchasing, and the Lallatin and Associates study;
- (2) Consult with the attorney general, the department of accounting and general services, the University of Hawaii, the department of education, and any other agency the auditor deems necessary to determine the existence of special circumstances or conditions that may necessitate exemptions to the code or special provisions in state government. The agencies listed in this paragraph shall provide full cooperation and assistance to the auditor;
- (3) Review a selection of state procurement codes, and interview a selection of procurement officials in other states to apply the benefits of other state procurement systems to Hawaii's system;
- (4) Review the federal procurement code, and interview federal procurement officials in an effort to benefit from the federal government's experience and expertise in selected areas of civilian procurement activities;
- (5) Develop draft rules to implement the proposed code; and
- (6) Develop a guidebook incorporating the rules of procurement activities that shall serve as a comprehensive instructional and informational manual on the procurement methods for items, goods, services, or construction for state agencies.

SECTION 7. The office of the auditor shall transmit all findings, recommendations, and information compiled pursuant to section 6 as of January 20, 1993, to the 1993 legislature for review and consideration. Thereafter, the auditor shall transmit all findings, recommendations, and information as they are compiled, on an incremental basis, to the legislature.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 1992.

(Approved June 19, 1992.)