

A Bill for an Act Relating to Procurement.

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

SECTION 1. Section 103D-309, Hawaii Revised Statutes, is amended to read as follows:

“§103D-309 Contract not binding unless funds available. (a) Contracts awarded pursuant to section 103D-302, 103D-303, or 103D-306, shall neither be binding nor have any force and effect of law unless the comptroller, the director of finance of a county, or the respective chief financial officers of the department of education, the judiciary, or the legislative branches of the State or county, as the case may be, endorses thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; provided that if the contract is a multi-term contract, the comptroller, director of finance, or chief financial officer shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract; provided further that the administrator of the state procurement office shall attest in writing to any recommendation or solicitations. This section shall not apply to any contract under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded, or to any contract for which consideration is in kind or forbearance, or to any contract awarded pursuant to section 103D-306 that is a one-time payment through a purchase order.

(b) In any contract involving not only state or county funds but supplemental funds from the federal government, this section shall be applicable only to that portion of the contract price as is payable out of state or county funds. As to the portion of the contract price as is expressed in the contract to be payable out of federal funds, the contract shall be construed to be an agreement to pay the portion to the contractor, only out of federal funds to be received from the federal government. This subsection shall be liberally construed so as not to hinder or impede the State in contracting for any project involving financial aid from the federal government.

(c) In any contract pursuant to section 264-33 involving not only state or county funds but supplemental funds from a utility, this section shall be applicable to that portion of the contract price payable out of state or county funds as well as that portion of the contract price payable out of funds from a utility, or payable out of state or county funds paid to a utility. The State or county may certify that there are sufficient funds for the utility's portion of the contract price if the amounts that a utility is obligated to pay under a legal agreement between the utility and the State, or a county, are sufficient to pay that portion of the contract price and the legal agreement:

- (1) Includes a specific description of the utility's share of the payment and terms of that payment;
- (2) Allows the State, county, or utility to provide progress payments or final payment based on the actual cost after a project is completed; and
- (3) Provides that in the event the State, county, or utility is delinquent in payments under the legal agreement, the State, county, or utility

shall be responsible for any and all additional costs attributable to such late payment.

Any such legal agreement shall be executed prior to the execution of the state or county contract and shall not jeopardize any federal, state, or county funds.

For the purposes of this subsection:

“Legal agreement” includes a utility agreement, memorandum of understanding, or memorandum of agreement.

“Utility” means a utility company or entity.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2010.

(Approved May 25, 2010.)