

**ACT 82**

H.B. NO. 347

A Bill for an Act Relating to the University of Hawaii.

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

SECTION 1. Chapter 304A, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

**“§304A-A Construction projects.** In the solicitation for bids for construction projects with a total estimated contract value of \$1,000,000 or higher, the university shall require each bidder to submit a listing of the bidder’s subcontractors who are to perform work with a value that exceeds five per cent of the total bid amount submitted by the bidder.

**§304A-B Pre-bid conference.** (a) At least fifteen days prior to submission of bids similar to those described in section 103D-302 for a construction or design-build project with a total estimated contract value of \$500,000 or more, and at least fifteen days prior to submission of proposals similar to those described in section 103D-303 for a construction or design-build project with a total estimated contract value of \$100,000 or more, the university shall hold a pre-bid conference and shall invite all potential interested bidders, offerors, subcontractors, and union representatives to attend.

(b) The university shall comply with the rules adopted pursuant to section 103D-303.5, by the procurement policy board established under section 103D-201.

**§304A-C Right to audit records.** (a) The university, at reasonable times and places, may audit the books and records of any person who has submitted cost or pricing data similar to those described in section 103D-312 to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract, unless another period is otherwise authorized in writing.

(b) The university shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. The books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless another period is otherwise authorized in writing.

**§304A-D Preference for small businesses; set-asides; use as subcontractors.** (a)<sup>1</sup> The university shall comply with the rules adopted pursuant to section 103D-906, by the procurement policy board established under section 103D-201.”

SECTION 2. Section 103D-102, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding subsection (a), this chapter shall not apply to contracts made by any regional system board of the Hawaii health systems corporation[-], or except with respect to sections 103D-110, 103D-304 with respect to design professional services furnished by licensees under chapter 464, 103D-324, 103D-707, and 103D-1002, the university or the board of regents of the university.”

SECTION 3. Section 304A-105, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board of regents shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices, which shall be

subject to ~~[chapter 103D.]~~ sections 103D-110, 103D-304 with respect to design professional services furnished by licensees under chapter 464, 103D-324, 103D-707, 103D-1002, 304A-A, 304A-B, 304A-C, and 304A-D. Except as provided in this subsection, chapter 103D shall not apply to any actions or activities undertaken, conducted, or performed under authority of the board of regents or the university; provided that the board of regents and the university are encouraged to use the provisions of chapter 103D as guidelines; and provided further that in using one or more provisions of chapter 103D as guidelines, neither the board of regents nor the university shall be:

- (1) Deemed to have waived in any way the exemption from the requirements and applicability of chapter 103D granted in this subsection;  
or
- (2) Subject to any of the provisions or requirements of chapter 103D other than those provided for in this subsection."

SECTION 4. The board of regents of the University of Hawaii shall submit annual reports to the legislature no later than twenty days prior to the convening of the regular sessions of 2011 and 2012, that shall include but not be limited to the following:

- (1) A description of the University of Hawaii's internal procurement process;
- (2) A description of the University of Hawaii's internal procedures for handling protests of solicitations or awards of contracts, if different from the procedures described under chapter 103D, Hawaii Revised Statutes; and
- (3) A description and summary of any protests or litigation that have arisen during the period of time that the University of Hawaii is exempt from chapter 103D, Hawaii Revised Statutes, with certain exceptions, pursuant to this Act.

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 8. This Act shall take effect on July 1, 2010; provided that on July 1, 2012, this Act shall be repealed and sections 103D-102(c) and 304A-105(b), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act.

(Approved May 6, 2010.)

#### Notes

1. No subsection (b).
2. Edited pursuant to HRS §23G-16.5.