

# Resolution

No. 23-231

APPROVING FOR INCLUSION IN THE 2024  
MAUI COUNTY COUNCIL LEGISLATIVE  
PACKAGE A STATE BILL RELATING TO  
PROCUREMENT

WHEREAS, the Hawaii Public Procurement Code contains a strong and clear statement of the requirements of ethical public procurement at section 103D-101, Hawaii Revised Statutes; and

WHEREAS, a recent bribery scandal involving an official in Maui County has highlighted potential pitfalls in placing undue reliance on the discretion of a single individual to determine that there is only one source for a required good, service, or construction; and

WHEREAS, to strengthen public scrutiny and transparency and minimize the risk of corruption and ethical violations, the Council finds that additional oversight is needed to maintain the integrity of sole source procurement decisions; and

WHEREAS, the need to address this weakness is particularly acute as Maui County faces elevated spending requirements in response to the wildfires of August 2023; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the proposed state bill attached as Exhibit "A," relating to procurement, is approved for inclusion in the 2024 Maui County Council Legislative Package; and
2. That certified copies of this Resolution will be transmitted to the Mayor and Director of Finance.

**Resolution No.** 23-231

APPROVED AS TO FORM AND LEGALITY:

A handwritten signature in blue ink, appearing to read "M. A. O'Neil", is written over a horizontal line.

Department of the Corporation Counsel  
County of Maui  
paf:cmn:23-316a

INTRODUCED BY:

*Tamara A. M. Paltin*

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TAMARA PALTIN

\_\_\_\_.B. NO. \_\_\_\_\_

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# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1       SECTION 1. The legislature finds that the Commission to  
2     Improve Standards of Conduct, in its Final Report submitted to  
3     the House of Representatives on December 1, 2022, urged county  
4     governments to identify organizational risks of corruption and  
5     ethical violations and to develop systematic improvements to  
6     such risks. The legislature finds that the county-related  
7     events recited in the Final Report, involving a select few  
8     employees and officials in the City and County of Honolulu, the  
9     County of Hawaii, and the County of Maui, have shaken the  
10    public's trust in the strength and integrity of county  
11    government. In particular, the bribery scandal involving an  
12    official in Maui County highlighted potential pitfalls in  
13    placing undue reliance on the discretion of a single individual  
14    to determine that there is only one source for a required good,  
15    service, or construction.

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1       The legislature further finds that the Hawaii Public  
2 Procurement Code should be amended to assist the counties in  
3 strengthening their procedures for sole-source procurements.

4       The legislature finds that the Hawaii Public Procurement  
5 Code contains a strong and clear statement of the requirements  
6 of ethical public procurement at section 103D-101, Hawaii  
7 Revised Statutes, and recognizes that principles of ethical  
8 procurement typically favor an absence of political involvement.  
9 However, when confronted with the responsibility of minimizing  
10 the risk of corruption and ethical violations, the legislature  
11 finds that additional oversight is needed to strengthen public  
12 scrutiny and transparency and maintain the integrity of sole  
13 source procurement decisions. The need to address this weakness  
14 is particularly acute as Maui County faces elevated spending  
15 requirements in response to the wildfires of August 2023.

16       Accordingly, the purpose of this Act is to require county  
17 council approval for contracts awarded by a county under its  
18 statutory authorization for sole source procurement if the  
19 contract amount exceeds \$30,000.

20       SECTION 2. Section 103D-306, Hawaii Revised Statutes, is  
21 amended to read as follows:

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1       "**§103D-306 Sole source procurement.** (a) A contract may  
2 be awarded for goods, services, or construction without  
3 competition when ~~[the]~~:

4       (1) The head of a purchasing agency determines in writing  
5 that there is only one source for the required good,  
6 service, or construction~~[, the]~~;

7       (2) The determination is reviewed and approved by the  
8 chief procurement officer~~[, the]~~;

9       (3) The written determination is posted in the manner  
10 described in rules adopted by the policy board~~[, a]~~;

11       (4) A review of past performance, if available, has been  
12 conducted~~[,]~~; and ~~[no]~~

13       (5) No objection is outstanding~~[,]~~;  
14 provided that a contract to be awarded by a county under this  
15 section shall first be approved by the council of the county by  
16 resolution if the contract amount exceeds \$30,000.

17       (b) The written determination, any objection, past  
18 performance evaluations relied upon, and a written summary of  
19 the disposition of any objection shall be included in the  
20 contract file.

21       ~~[(b)]~~ (c) The written determination shall contain such  
22 information as the rules of the policy board require. Persons

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1 may file written objections to the issuance of a contract  
2 pursuant to this section. Rules of the policy board shall  
3 provide for the disposition of objections, including a written  
4 summary of the disposition.

5 [~~(e)~~] (d) The rules of the policy board shall include a  
6 non-exhaustive list of procurements which constitute sole source  
7 procurements and criteria for determining when a particular  
8 procurement may be determined to be a sole source. The rules  
9 shall also prescribe when cost or pricing data must be  
10 considered and how they are to be used in establishing the  
11 price, terms, and conditions, if any, for a contract awarded  
12 pursuant to this section."

13 SECTION 3. This Act does not affect rights and duties that  
14 matured, penalties that were incurred, and proceedings that were  
15 begun before its effective date.

16 SECTION 4. Statutory material to be deleted is bracketed  
17 and in strikethrough. New statutory material is underscored.

18 SECTION 5. This Act shall take effect upon its approval.

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