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# A BILL FOR AN ACT

RELATING TO PUBLIC CONTRACTS.

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

1           SECTION 1. Section 103D-701, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§103D-701 Authority to resolve protested solicitations**  
4 **and awards.** (a) Any actual or prospective bidder, offeror, or  
5 contractor who is aggrieved in connection with the solicitation  
6 or award of a contract may protest to the chief procurement  
7 officer or a designee as specified in the solicitation. Except  
8 as provided in sections 103D-303 and 103D-304, a protest shall  
9 be submitted in writing within [~~five~~] seven working days after  
10 the aggrieved person knows or should have known of the facts  
11 giving rise thereto; provided that a protest of an award or  
12 proposed award shall in any event be submitted in writing within  
13 [~~five~~] seven working days after the posting of award of the  
14 contract under section 103D-302 or 103D-303, if no request for  
15 debriefing has been made, as applicable; provided further that  
16 no protest based upon the content of the solicitation shall be



1 considered unless it is submitted in writing prior to the date  
2 set for the receipt of offers.

3 (b) The purchasing agency shall notify in writing all  
4 offerors that solicited an award of a contract of their non-  
5 selection not later than the day of the posting of the award.  
6 Information posted publicly about the award shall include, where  
7 applicable, but is not limited to:

8 (1) The names of offerors soliciting an award of the  
9 contract;

10 (2) The numerical scores given by the evaluation committee  
11 to the acceptable and potentially acceptable  
12 proposals, and if a best and final offer was  
13 requested, the names of the priority-listed offerors  
14 and their final numerical scores;

15 (3) The name of the successful offeror and dollar amount  
16 of the award; and

17 (4) The basis for making the award to the successful  
18 offeror; provided that trade secrets or other  
19 proprietary or confidential information shall not be  
20 disclosed.

21 ~~(b)~~ (c) The chief procurement officer or a designee,  
22 prior to the commencement of an administrative proceeding under



1 section 103D-709 or an action in court pursuant to section  
2 103D-710, may settle and resolve a protest concerning the  
3 solicitation or award of a contract. This authority shall be  
4 exercised in accordance with rules adopted by the policy board.

5 ~~[(e)]~~ (d) If the protest is not resolved by mutual  
6 agreement, the chief procurement officer or a designee shall  
7 promptly issue a decision in writing to uphold or deny the  
8 protest. The decision shall:

- 9 (1) State the reasons for the action taken; and  
10 (2) Inform the protestor of the protestor's right to an  
11 administrative proceeding as provided in this part, if  
12 applicable.

13 ~~[(d)]~~ (e) A copy of the decision under subsection ~~[(e)]~~  
14 (d) shall be mailed or otherwise furnished immediately to the  
15 protestor and any other party intervening.

16 ~~[(e)]~~ (f) A decision under subsection ~~[(e)]~~ (d) shall be  
17 final and conclusive, unless any person adversely affected by  
18 the decision commences an administrative proceeding under  
19 section 103D-709.

20 ~~[(f)]~~ (g) In the event of a timely protest under  
21 subsection (a), no further action shall be taken on the  
22 solicitation or the award of the contract until the chief



1 procurement officer makes a written determination that the award  
2 of the contract without delay is necessary to protect  
3 substantial interests of the State.

4 [~~g~~] (h) In addition to any other relief, when a protest  
5 is sustained and the protestor should have been awarded the  
6 contract under the solicitation but is not, then the protestor  
7 shall be entitled to the actual costs reasonably incurred in  
8 connection with the solicitation, including bid or proposal  
9 preparation costs but not attorney's fees."

10 SECTION 3. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 4. This Act shall take effect upon its approval.



S.B. NO. 2827  
S.D. 1  
H.D. 1

**Report Title:**

Public Contracts; Bid Protest; Procurement Policy Board

**Description:**

Requires purchasing agencies no later than the day a public contract award is posted, to notify offerors in writing of their non-selection, and to post information about the award and basis for the award; Increases the time for protesting an award from five to seven days of its posting. (SB2827 HD1)

