
A BILL FOR AN ACT

RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE.

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

1 SECTION 1. Section 103D-208, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§103D-208 Delegation of authority by the chief**
4 **procurement officer.** Subject to the rules of the policy board,
5 each chief procurement officer may delegate any authority or
6 duty conferred upon the chief procurement officer by this
7 chapter to designees or to any department, agency or official
8 within their respective jurisdictions[-]; provided that the
9 chief procurement officer shall not delegate the chief
10 procurement officer's authority to resolve protests under
11 section 103D-701."

12 SECTION 2. Section 103D-310, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§103D-310 Responsibility of offerors.** (a) Unless the
15 policy board, by rules, specifies otherwise, before submitting
16 an offer, a prospective offeror, not less than ten calendar days
17 prior to the day designated for opening offers, shall give



1 written notice of the intention to submit an offer to the
2 procurement officer responsible for that particular procurement.

3 (b) Whether or not an intention to bid is required, the
4 procurement officer shall determine whether the prospective
5 offeror has the financial ability, resources, skills,
6 capability, and business integrity necessary to perform the
7 work. For this purpose, the officer, in the officer's
8 discretion, may require any prospective offeror to submit
9 answers, under oath, to questions contained in a standard form
10 of questionnaire to be prepared by the policy board. Whenever
11 it appears from answers to the questionnaire or otherwise, that
12 the prospective offeror is not fully qualified and able to
13 perform the intended work, a written determination of
14 nonresponsibility of an offeror shall be made by the head of the
15 purchasing agency, in accordance with rules adopted by the
16 policy board. The unreasonable failure of an offeror to
17 promptly supply information in connection with an inquiry with
18 respect to responsibility may be grounds for a determination of
19 nonresponsibility with respect to ~~such~~ the offeror. The
20 decision of the head of the purchasing agency shall be final
21 unless the offeror applies for administrative review pursuant to
22 section 103D-709.



1 (c) All offerors, upon award of contract, shall comply
2 with all laws governing entities doing business in the [~~State,~~
3 state, including chapters 237, 383, 386, 392, and 393. Offerors
4 shall produce documents to the procuring officer to demonstrate
5 compliance with this subsection. Any offeror making a false
6 affirmation or certification under this subsection shall be
7 suspended from further offerings or awards pursuant to section
8 103D-702. The procuring officer shall verify compliance with
9 this subsection for all contracts awarded pursuant to sections
10 103D-302, 103D-303, 103D-304, and 103D-306; provided that the
11 attorney general may waive the requirements of this subsection
12 for contracts for legal services if the attorney general
13 certifies in writing that comparable legal services are not
14 available in this [~~State,~~] state.

15 (d) Any false information or misrepresentation knowingly
16 placed in the solicitation of an offeror or a subcontractor
17 shall be a basis for not awarding the contract to the offeror or
18 the subcontractor, and the chief procurement officer shall apply
19 the provisions of section 103D-702; provided that a one year
20 mandatory suspension from consideration for awards under this
21 chapter shall be imposed.



1 [~~(d)~~] (e) Information furnished by an offeror pursuant to
2 [~~this section~~] subsections (a), (b), and (c) shall not be
3 disclosed to any person except to law enforcement agencies as
4 provided by chapter 92F."

5 SECTION 3. Section 103D-701, Hawaii Revised Statutes, is
6 amended by amending subsections (a), (b), and (c) to read as
7 follows:

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



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

3 (b) The chief procurement officer [~~or a designee~~], prior
4 to the commencement of an administrative proceeding under
5 section 103D-709 or an action in court pursuant to section 103D-
6 710, may settle and resolve a protest concerning the
7 solicitation or award of a contract. This authority shall be
8 exercised in accordance with rules adopted by the policy board.

9 (c) If the protest is not resolved by mutual agreement,
10 the chief procurement officer [~~or a designee~~] shall promptly
11 issue a decision in writing to uphold or deny the protest. The
12 decision shall:

- 13 (1) State the reasons for the action taken; and
- 14 (2) Inform the protestor of the protestor's right to an
15 administrative proceeding as provided in this part, if
16 applicable."

17 SECTION 4. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

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



Report Title:

Procurement; False Information; Sanctions

Description:

Subjects offerors or subcontractors who intentionally use false information or misrepresentations to obtain a procurement contract to sanctions including the rejection of the solicitation and a one year mandatory suspension from consideration for procurement awards. Prohibits the chief procurement officer from delegating authority to resolve protest under section 103-701. (SB2867 HD2)

