

JAN 22 2008

---

---

# A BILL FOR AN ACT

RELATING TO THE PROCUREMENT CODE.

**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; pre-job conference.** (a) For any project with a  
5 total estimated contract value of \$500,000 or greater, the  
6 appropriate chief procurement officer shall hold a pre-job  
7 conference, which the contractor, all subcontractors, and any  
8 employee representative of workers who will be working on the  
9 project shall be required to attend, at least thirty days prior  
10 to the date the contractor plans to begin work.

11           [~~(a)~~] (b) Any actual or prospective bidder, offeror, or  
12 contractor who is aggrieved in connection with the solicitation  
13 or award of a contract may protest to the chief procurement  
14 officer or a designee as specified in the solicitation. Except  
15 as provided in sections 103D-303 and 103D-304, a protest shall  
16 be submitted in writing within five working days after the  
17 aggrieved person knows or should have known of the facts giving  
18 rise thereto; provided that a protest of an award or proposed



1 award ~~[shall]~~, in any event, shall be submitted in writing  
2 within five working days after the ~~[posting of award of the~~  
3 ~~contract under section 103D-302 or 103D-303, if no request for~~  
4 ~~debriefing has been made, as applicable; provided further that~~  
5 ~~no protest based upon the content of the solicitation shall be~~  
6 ~~considered unless it is submitted in writing prior to the date~~  
7 ~~set for the receipt of offers.] pre-job conference held pursuant~~  
8 to subsection (a).

9 ~~[(b)]~~ (c) The chief procurement officer or a designee,  
10 prior to the commencement of an administrative proceeding under  
11 section 103D-709 or an action in court pursuant to section 103D-  
12 710, may settle and resolve a protest concerning the  
13 solicitation or award of a contract. This authority shall be  
14 exercised in accordance with rules adopted by the policy board.

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

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



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

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

8           ~~[(f)]~~ (g) In the event of a timely protest under  
9 subsection ~~[(a)]~~ (b), no further action shall be taken on the  
10 solicitation or the award of the contract until the chief  
11 procurement officer makes a written determination that the award  
12 of the contract without delay is necessary to protect  
13 substantial interests of the State.

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

20           (i) Regarding awards made under procedures pursuant to  
21 sections 103D-303 or 103D-304, unsuccessful offerors and non-  
22 selected professional service providers may submit a written



1 request for a debriefing to the chief procurement officer or  
 2 designee within three working days after the posting of the  
 3 contract award. Thereafter, the appropriate chief procurement  
 4 officer shall provide the requestor a prompt debriefing in  
 5 accordance with rules adopted by the policy board. Any protest  
 6 by the requestor following the debriefing shall be submitted in  
 7 writing prior to the pre-job conference held pursuant to  
 8 subsection (a)."

9 SECTION 2. Statutory material to be repealed is bracketed  
 10 and stricken. New statutory material is underscored.

11 SECTION 3. This Act shall take effect upon its approval.

12

INTRODUCED BY:

*Cynthia*  
 \_\_\_\_\_  
*by request*



**Report Title:**

Procurement Code; Pre-Job Conference

**Description:**

Requires chief procurement officer to hold a pre-job conference at least 30 days before contract work begins. Allows unselected offerors of professional services and in competitive sealed proposals to ask for a debriefing. Requires any subsequent protest to be submitted before the pre-job conference.

