

JAN 22 2008

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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. The legislature finds that bidders in a public  
2 contract award are often unaware that there is cause for filing  
3 a protest prior to the deadline for filing a protest.

4           The purpose of this Act is to require the purchasing agency  
5 to supply public contract bidders with the information required  
6 to determine if there is a need to investigate filing a protest  
7 action, before such a filing becomes untimely.

8           SECTION 2. Section 103D-303, Hawaii Revised Statutes, is  
9 amended to read as follows:

10           "**§103D-303 Competitive sealed proposals.** (a) Competitive  
11 sealed proposals may be utilized to procure goods, services, or  
12 construction designated in rules adopted by the procurement  
13 policy board as goods, services, or construction [~~which~~] that  
14 are either not practicable or not advantageous to the State to  
15 procure by competitive sealed bidding. Competitive sealed  
16 proposals may also be utilized when the head of a purchasing  
17 agency determines in writing that the use of competitive sealed



1 bidding is either not practicable or not advantageous to the  
2 State.

3 (b) Proposals shall be solicited through a request for  
4 proposals.

5 (c) Notice of the request for proposals shall be given in  
6 the same manner as provided in section 103D-302(c).

7 (d) Proposals shall be opened so as to avoid disclosure of  
8 contents to competing offerors during the process of  
9 negotiation. A register of proposals shall be prepared in  
10 accordance with rules adopted by the policy board and shall be  
11 open for public inspection after contract award.

12 (e) The request for proposals shall state the relative  
13 importance of price and other evaluation factors.

14 (f) Discussions may be conducted with responsible offerors  
15 who submit proposals determined to be reasonably susceptible of  
16 being selected for award for the purpose of clarification to  
17 assure full understanding of, and responsiveness to, the  
18 solicitation requirements. Offerors shall be accorded fair and  
19 equal treatment with respect to any opportunity for discussion  
20 and revision of proposals, and revisions may be permitted after  
21 submissions and prior to award for the purpose of obtaining best  
22 and final offers. In conducting discussions, there shall be no



1 disclosure of any information derived from proposals submitted  
2 by competing offerors.

3 (g) [Award] An award shall be made to the responsible  
4 offeror whose proposal is determined in writing to be the most  
5 advantageous taking into consideration price and the evaluation  
6 factors set forth in the request for proposals. No other  
7 factors or criteria shall be used in the evaluation. The  
8 contract file shall contain the basis on which the award is  
9 made.

10 (h) The purchasing agency shall include the following in  
11 its posting of the award of the contract:

12 (1) The register of proposals;

13 (2) The name of the successful offeror and the dollar  
14 amount of the offer;

15 (3) The evaluation of proposals completed by each person  
16 on the evaluation committee who participated in the  
17 evaluation process, which includes:

18 (A) The numeric rating points awarded to each offeror  
19 for each of the evaluation criteria, if any; and

20 (B) The total number of numeric rating points awarded  
21 to each offeror, if any; and

22 (4) The basis for selecting the successful offeror;



1 provided that trade secrets or other proprietary or confidential  
2 information shall not be disclosed in the posting of the award.

3       ~~[(h)]~~ (i) In cases of awards made under this section,  
4 nonselected offerors may submit a written request for debriefing  
5 to the chief procurement officer or designee within three  
6 working days after the posting of the award of the contract.  
7 Thereafter, the head of the purchasing agency shall provide the  
8 requester a prompt debriefing in accordance with rules adopted  
9 by the policy board. Any protest by the requester pursuant to  
10 section 103D-701 following debriefing shall be filed in writing  
11 with the chief procurement officer or designee within five  
12 working days after the date that the debriefing is completed."

13       SECTION 3. Section 103D-304, Hawaii Revised Statutes, is  
14 amended to read as follows:

15       "**§103D-304 Procurement of professional services.** (a)  
16 Professional services shall be procured in accordance with  
17 sections 103D-302, 103D-303, 103D-305, 103D-306, or 103D-307, or  
18 this section; provided that design professional services  
19 furnished by licensees under chapter 464 shall be procured  
20 pursuant to this section or section 103D-307. Contracts for  
21 professional services shall be awarded on the basis of



1 demonstrated competence and qualification for the type of  
2 services required, and at fair and reasonable prices.

3 (b) At a minimum, before the beginning of each fiscal  
4 year, the head of each purchasing agency shall publish a notice  
5 inviting persons engaged in providing professional services  
6 which the agency anticipates needing in the next fiscal year, to  
7 submit current statements of qualifications and expressions of  
8 interest to the agency. Additional notices shall be given if:

- 9 (1) The response to the initial notice is inadequate;  
10 (2) The response to the initial notice does not result in  
11 adequate representation of available sources;  
12 (3) New needs for professional services arise; or  
13 (4) Rules adopted by the policy board so specify.

14 The chief procurement officer may specify a uniform format for  
15 statements of qualifications. Persons may amend these  
16 statements by filing a new statement prior to the date  
17 designated for submission.

18 (c) The head of the purchasing agency shall designate a  
19 review committee consisting of a minimum of three persons with  
20 sufficient education, training, and licenses or credentials for  
21 each type of professional service which may be required. In  
22 designating the members of the review committee, the head of the



1 purchasing agency shall ensure the impartiality and independence  
2 of committee members. The names of the members of the review  
3 committee established under this section shall be placed in the  
4 contract file.

5 The committee shall review and evaluate all submissions and  
6 other pertinent information, including references and reports,  
7 and prepare a list of qualified persons to provide these  
8 services. Persons included on the list of qualified persons may  
9 amend their statements of qualifications as necessary or  
10 appropriate. Persons shall immediately inform the head of the  
11 purchasing agency of any change in information furnished [~~which~~]  
12 that would disqualify the person from being considered for a  
13 contract award.

14 (d) Whenever during the course of the fiscal year the  
15 agency needs a particular professional service, the head of the  
16 purchasing agency shall designate a selection committee to  
17 evaluate the statements of qualification and performance data of  
18 those persons on the list prepared pursuant to subsection (c)  
19 along with any other pertinent information, including references  
20 and reports. The selection committee shall be comprised of a  
21 minimum of three persons with sufficient education, training,  
22 and licenses or credentials in the area of the services



1 required. In designating the members of the selection  
2 committee, the head of the purchasing agency shall ensure the  
3 impartiality and independence of committee members. The names  
4 of the members of a selection committee established under this  
5 section shall be placed in the contract file.

6 (e) The selection criteria employed in descending order of  
7 importance shall be:

8 (1) Experience and professional qualifications relevant to  
9 the project type;

10 (2) Past performance on projects of similar scope for  
11 public agencies or private industry, including  
12 corrective actions and other responses to notices of  
13 deficiencies;

14 (3) Capacity to accomplish the work in the required time;  
15 and

16 (4) Any additional criteria determined in writing by the  
17 selection committee to be relevant to the purchasing  
18 agency's needs or necessary and appropriate to ensure  
19 full, open, and fair competition for professional  
20 services contracts.

21 (f) The selection committee shall evaluate the submissions  
22 of persons on the list prepared pursuant to subsection (c) and



1 any other pertinent information [~~which~~] that may be available to  
2 the agency, against the selection criteria. The committee may  
3 conduct confidential discussions with any person who is included  
4 on the list prepared pursuant to subsection (c) regarding the  
5 services [~~which~~] that are required and the services they are  
6 able to provide. In conducting discussions, there shall be no  
7 disclosure of any information derived from the competing  
8 professional service offerors.

9 (g) The selection committee shall rank a minimum of three  
10 persons based on the selection criteria and send the ranking to  
11 the head of the purchasing agency. The contract file shall  
12 contain a copy of the summary of qualifications for the ranking  
13 of each of the persons provided to the head of the purchasing  
14 agency for contract negotiations. If more than one person holds  
15 the same qualifications under this section, the selection  
16 committee shall rank the persons in a manner that ensures equal  
17 distribution of contracts among the persons holding the same  
18 qualifications. The recommendations of the selection committee  
19 shall not be overturned without due cause.

20 (h) The head of the purchasing agency or designee shall  
21 negotiate a contract with the first ranked person, including a  
22 rate of compensation which is fair and reasonable, established





1 in writing, and based upon the estimated value, scope,  
2 complexity, and nature of the services to be rendered. If a  
3 satisfactory contract cannot be negotiated with the first ranked  
4 person, negotiations with that person shall be formally  
5 terminated and negotiations with the second ranked person on the  
6 list shall commence. The contract file shall include  
7 documentation from the head of the purchasing agency, or  
8 designee, to support selection of other than the first ranked or  
9 next ranked person. Failing accord with the second ranked  
10 person, negotiations with the next ranked person on the list  
11 shall commence. If a contract at a fair and reasonable price  
12 cannot be negotiated, the selection committee may be asked to  
13 submit a minimum of three additional persons for the head of the  
14 purchasing agency to resume negotiations in the same manner  
15 provided in this subsection. Negotiations shall be conducted  
16 confidentially.

17 (i) Contracts awarded under this section for \$5,000 or  
18 more shall be posted electronically within seven days of the  
19 contract award by the chief procurement officer or designee and  
20 shall remain posted for at least one year. Information to be  
21 posted shall include, but not be limited to:



1 (1) The names of the persons submitted under subsection  
2 (g);

3 (2) The name of the person or organization receiving the  
4 award;

5 (3) The dollar amount of the contract;

6 (4) The name of the head of the purchasing agency or  
7 designee making the selection; and

8 (5) Any relationship of the principals to the official  
9 making the award.

10 (j) Contracts for professional services of less than the  
11 limits in section 103D-305, may be negotiated by the head of the  
12 purchasing agency, or designee, with at least any two persons on  
13 the list of qualified persons established pursuant to subsection  
14 (c). Negotiations shall be conducted in the manner set forth in  
15 subsection (h), with ranking based on the selection criteria of  
16 subsection (e) as determined by the head of the agency.

17 (k) The purchasing agency shall include the following in  
18 its posting of the award of the contract:

19 (1) The register of proposals;

20 (2) The name of the successful offeror and the dollar  
21 amount of the offer;



1        (3) The evaluation of proposals completed by each person  
2        on the evaluation committee who participated in the  
3        evaluation process, which includes:

4        (A) The numeric rating points awarded to each offeror  
5        for each of the evaluation criteria, if any; and

6        (B) The total number of numeric rating points awarded  
7        to each offeror, if any; and

8        (4) The basis for selecting the successful offeror;  
9        provided that trade secrets or other proprietary or confidential  
10       information shall not be disclosed in the posting of the award.

11       ~~[(k)]~~ (1) In cases of awards made under this section,  
12 nonselected professional service providers may submit a written  
13 request for debriefing to the chief procurement officer or  
14 designee within three working days after the posting of the  
15 award of the contract. Thereafter, the head of the purchasing  
16 agency shall provide the requester a prompt debriefing in  
17 accordance with rules adopted by the policy board. Any protest  
18 by the requester pursuant to section 103D-701 following  
19 debriefing shall be filed in writing with the chief procurement  
20 officer or designee within five working days after the date that  
21 the debriefing is completed."



1 SECTION 4. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect upon its approval.  
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**Report Title:**

Public Contracts; Bid Protest

**Description:**

Requires purchasing agencies, when posting public contract awards, to include information regarding the basis for the award.

