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# 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-302, Hawaii Revised Statutes, is  
2 amended by amending subsection (h) to read as follows:

3 "(h) The contract shall be awarded with reasonable  
4 promptness by written notice to the lowest responsible and  
5 responsive bidder whose bid meets the requirements and criteria  
6 set forth in the invitation for bids. Any false information or  
7 misrepresentation knowingly placed in the bid by a bidder or  
8 affiliate of a bidder shall be a basis for not awarding the bid  
9 to that bidder or the bidder's affiliate. Additionally, the  
10 chief procurement officer shall place the bidder or affiliate of  
11 the bidder, as applicable, on a one year mandatory suspension  
12 from bidding for any contract under this chapter, if, after  
13 affording the bidder a reasonable opportunity to be heard, the  
14 chief procurement officer finds that the bidder or affiliate of  
15 the bidder knowingly placed false information or any  
16 misrepresentation in a bid. In the event all bids exceed  
17 available funds as certified by the appropriate fiscal officer,  
18 the head of the purchasing agency responsible for the



1 procurement in question is authorized in situations where time  
2 or economic considerations preclude resolicitation of work of a  
3 reduced scope to negotiate an adjustment of the bid price,  
4 including changes in the bid requirements, with the low  
5 responsible and responsive bidder, in order to bring the bid  
6 within the amount of available funds."

7 SECTION 2. Section 103D-303, Hawaii Revised Statutes, is  
8 amended by amending subsection (g) to read as follows:

9 "(g) Award shall be made to the responsible offeror whose  
10 proposal is determined in writing to be the most advantageous  
11 taking into consideration price and the evaluation factors set  
12 forth in the request for proposals. No other factors or  
13 criteria shall be used in the evaluation. The contract file  
14 shall contain the basis on which the award is made. Any false  
15 information or misrepresentation knowingly placed in the  
16 proposal by the offeror or affiliate of an offeror shall be a  
17 basis for not selecting the offeror or the offeror's affiliate  
18 of that proposal. Additionally, the chief procurement officer  
19 shall place the offeror or affiliate of the offeror, as  
20 applicable, on a one year mandatory suspension from submitting  
21 any proposal for any contract under this chapter, if, after  
22 affording the offeror a reasonable opportunity to be heard, the



1 chief procurement officer finds that the offeror or affiliate of  
2 the offeror knowingly placed false information or any  
3 misrepresentation in a proposal."

4 SECTION 3. Section 103D-304, Hawaii Revised Statutes, is  
5 amended by amending subsection (b) to read as follows:

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

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

17 The chief procurement officer may specify a uniform format for  
18 statements of qualifications. Persons may amend these  
19 statements by filing a new statement prior to the date  
20 designated for submission. Any false information or  
21 misrepresentation knowingly placed in a statement by a person or  
22 affiliate of a person shall be a basis for not ranking the



1 person or the person's affiliate submitting the false  
2 information and not negotiating a contract with that person or  
3 affiliate. In addition, the chief procurement officer shall  
4 place a person or the person's affiliate, as applicable,  
5 submitting false information on a one year mandatory suspension  
6 from submitting any proposal for any contract under this chapter,  
7 if, after affording the person or the person's affiliate a  
8 reasonable opportunity to be heard, the chief procurement officer  
9 finds that false information or any misrepresentation was  
10 knowingly submitted."

11 SECTION 4. Section 103D-305, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 **"§103D-305 Small purchases; prohibition against parceling.**

14 (a) Procurements of less than \$50,000 for goods, services, or  
15 construction shall be made in accordance with procedures set  
16 forth in rules adopted by the policy board that are designed to  
17 ensure administrative simplicity and as much competition as is  
18 practicable; provided that multiple expenditures shall not be  
19 created at the inception of a transaction or project so as to  
20 evade the requirements of this chapter; and provided further  
21 that procurement requirements shall not be artificially divided  
22 or parceled so as to constitute a small purchase under this  
23 section.



1 (b) Procurements of \$25,000 to less than \$50,000 shall be  
2 made in accordance with small purchase procedures; provided that  
3 small purchase procurements through an electronic system shall  
4 be required after the policy board has adopted rules for  
5 electronic procurement and provided training to the affected  
6 agency.

7 (c) Any false information or misrepresentation knowingly  
8 placed in a bid by a bidder, or affiliate of the bidder, shall  
9 be a basis for not awarding a contract to the bidder or  
10 affiliate of the bidder. In addition, the chief procurement  
11 officer shall place the bidder or the bidder's affiliate, as  
12 applicable, on a one year mandatory suspension from submitting  
13 any bid or proposal for any contract under this chapter, if,  
14 after affording the bidder or the bidder's affiliate a reasonable  
15 opportunity to be heard, the chief procurement officer finds that  
16 the bidder or the bidder's affiliate knowingly placed false  
17 information or any misrepresentation in a bid."

18 SECTION 5. Section 103D-306, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 **"§103D-306 Sole source procurement.** (a) A contract may  
21 be awarded for goods, services, or construction without  
22 competition when the head of a purchasing agency determines in  
23 writing that there is only one source for the required good,



1 service, or construction, the determination is reviewed and  
2 approved by the chief procurement officer, the written  
3 determination is posted in the manner described in rules adopted  
4 by the policy board, and no objection is outstanding. The  
5 written determination, any objection, and a written summary of  
6 the disposition of any objection shall be included in the  
7 contract file.

8 (b) The written determination shall contain such  
9 information as the rules of the policy board require. Persons  
10 may file written objections to the issuance of a contract  
11 pursuant to this section. Rules of the policy board shall  
12 provide for the disposition of objections, including a written  
13 summary of the disposition.

14 (c) The rules of the policy board shall include a non-  
15 exhaustive list of procurements which constitute sole source  
16 procurements and criteria for determining when a particular  
17 procurement may be determined to be a sole source. The rules  
18 shall also prescribe when cost or pricing data must be  
19 considered and how they are to be used in establishing the  
20 price, terms, and conditions, if any, for a contract awarded  
21 pursuant to this section.



1       (d) Any material misrepresentation knowingly made by a  
2 potential contractor or affiliate of a contractor under this  
3 section to entice the awarding of a contract shall be a basis  
4 for not selecting that potential contractor or affiliate of the  
5 contractor. In addition, the chief procurement officer shall  
6 place that potential contractor or the contractor's affiliate, as  
7 applicable, on a one year mandatory suspension from submitting  
8 any bid or proposal for any contract under this chapter, if,  
9 after affording the person a reasonable opportunity to be heard,  
10 the chief procurement officer finds that the person knowingly  
11 made a material misrepresentation."

12       SECTION 6. Section 103D-307, Hawaii Revised Statutes, is  
13 amended to read as follows:

14       "~~§~~103D-307~~§~~ **Emergency procurements.** (a) The head of  
15 a purchasing agency may obtain a good, service, or construction  
16 essential to meet an emergency by means other than specified in  
17 this chapter when the following conditions exist:

18       (1) A situation of an unusual or compelling urgency  
19           creates a threat to life, public health, welfare, or  
20           safety by reason of major natural disaster, epidemic,  
21           riot, fire, or such other reason as may be determined  
22           by the head of that purchasing agency;



1           (2) The emergency condition generates an immediate and  
2           serious need for goods, services, or construction that  
3           cannot be met through normal procurement methods and  
4           the government would be seriously injured if the  
5           purchasing agency is not permitted to employ the means  
6           it proposes to use to obtain the goods, services, or  
7           construction; and

8           (3) Without the needed good, service, or construction, the  
9           continued functioning of government, the preservation  
10          or protection of irreplaceable property, or the health  
11          and safety of any person will be seriously threatened.

12          (b) The emergency procurement shall be made with such  
13          competition as is practicable under the circumstances and, where  
14          practicable, approval from the chief procurement officer shall  
15          be obtained prior to the procurement. A written determination  
16          of the basis for the emergency and for the selection of the  
17          particular contractor shall be included in the contract file.

18          (c) Any material misrepresentation knowingly made by a  
19          potential contractor or affiliate of that contractor under this  
20          section to entice the awarding of a contract shall be a basis  
21          for not selecting that potential contractor or affiliate of the  
22          contractor. In addition, the chief procurement officer shall





1 place that potential contractor or contractor's affiliate, as  
2 applicable, on a one year mandatory suspension from submitting  
3 any bid or proposal for any contract under this chapter, if,  
4 after affording the person a reasonable opportunity to be heard,  
5 the chief procurement officer finds that the person knowingly  
6 made a material misrepresentation."

7 SECTION 7. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 8. This Act shall take effect upon its approval.



**Report Title:**

Procurement; False Information

**Description:**

Provides sanctions for false information or misrepresentation submitted by a person or affiliate to obtain a procurement contract. (SD1)

