
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-310, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§103D-310 Responsibility of offerors. (a) Unless the
4 policy board, by rules, specifies otherwise, before submitting
5 an offer, a prospective offeror, not less than ten calendar days
6 prior to the day designated for opening offers, shall give
7 written notice of the intention to submit an offer to the
8 procurement officer responsible for that particular procurement.

9 (b) Whether or not an intention to bid is required, the
10 procurement officer shall determine whether the prospective
11 offeror has the financial ability, resources, skills,
12 capability, and business integrity necessary to perform the
13 work. For this purpose, the officer, in the officer's
14 discretion, may require any prospective offeror to submit
15 answers, under oath, to questions contained in a standard form
16 of questionnaire to be prepared by the policy board. Whenever
17 it appears from answers to the questionnaire or otherwise, that
18 the prospective offeror is not fully qualified and able to



1 perform the intended work, a written determination of
2 nonresponsibility of an offeror shall be made by the head of the
3 purchasing agency, in accordance with rules adopted by the
4 policy board. The unreasonable failure of an offeror to
5 promptly supply information in connection with an inquiry with
6 respect to responsibility may be grounds for a determination of
7 nonresponsibility with respect to [~~such~~] the offeror. The
8 decision of the head of the purchasing agency shall be final
9 unless the offeror applies for administrative review pursuant to
10 section 103D-709.

11 (c) All offerors, upon award of contract, shall comply
12 with all laws governing entities doing business in the State,
13 including chapters 237, 383, 386, 392, and 393. Offerors shall
14 produce documents to the procuring officer to demonstrate
15 compliance with this subsection. Any offeror making a false
16 affirmation or certification under this subsection shall be
17 suspended from further offerings or awards pursuant to section
18 103D-702. The procuring officer shall verify compliance with
19 this subsection for all contracts awarded pursuant to sections
20 103D-302, 103D-303, 103D-304, and 103D-306; provided that the
21 attorney general may waive the requirements of this subsection
22 for contracts for legal services if the attorney general



1 certifies in writing that comparable legal services are not
2 available in this State.

3 (d) Any false information or misrepresentation knowingly
4 placed in the solicitation of an offeror or a subcontractor by
5 an agency shall be a basis for nullification of the solicitation
6 by the administrator of the state procurement office.

7 (e) Any false information or misrepresentation knowingly
8 placed in a bid by an offeror or subcontractor shall be the
9 basis for:

10 (1) Not awarding the bid to that offeror or the offeror's
11 subcontractor; provided that the offeror or
12 subcontractor may protest the non-award first under
13 section 103D-701, secondly to the chief procurement
14 officer under section 103D-703, and thirdly to the
15 department of commerce and consumer affairs as
16 provided in section 103D-709;

17 (2) Application by the chief procurement officer of
18 section 103D-702; and

19 (3) Imposition by the chief procurement officer of a one
20 year mandatory suspension of the offeror or
21 subcontractor from consideration for awards under this
22 chapter.



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

5 SECTION 2. Section 103D-703, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) This section applies to controversies between a
8 governmental body and a contractor [~~which~~] that arise under, or
9 by virtue of, a solicitation or bid made by a contractor, a
10 contract between them, including, without limitation,
11 controversies based upon breach of contract, mistake,
12 misrepresentation, or other cause for contract modification or
13 rescission."

14 SECTION 3. Section 103D-709, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) The several hearings officers appointed by the
17 director of the department of commerce and consumer affairs
18 pursuant to section 26-9(f) shall have jurisdiction to review
19 and determine de novo, any [~~request~~]:

20 (1) Request from any bidder, offeror, or contractor[~~7~~
21 person];



- 1 (2) Person aggrieved under section 103D-106 [~~or~~
- 2 ~~governmental body~~] or 103D-310; or
- 3 (3) Governmental body aggrieved by a determination of the
- 4 chief procurement officer, head of a purchasing
- 5 agency, or a designee of either officer under section
- 6 103D-310, 103D-701, or 103D-702."

7 SECTION 4. Statutory material to be repealed is bracketed

8 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: Mele Carroll

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JAN 28 2009



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 1 year mandatory suspension from consideration for procurement awards. Nullifies solicitations containing false information or knowing misrepresentations. Requires a 3-tier system of protests and appeal.

