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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 (g) to read as follows:  
3           "(g) Correction or withdrawal of inadvertently erroneous  
4 bids before or after award, or cancellation of invitations for  
5 bids, awards, or contracts based on such bid mistakes, shall be  
6 permitted in accordance with rules adopted by the policy board.  
7 After bid opening, no changes in bid prices or other provisions  
8 of bids prejudicial to the interest of the public or to fair  
9 competition shall be permitted. Except as otherwise provided by  
10 rule, all decisions to permit the correction or withdrawal of  
11 bids, or to cancel awards or contracts based on bid mistakes,  
12 shall be supported by a written determination made by the chief  
13 procurement officer or head of a purchasing agency.  
14           If a bid protest under section 103D-701 is based upon the  
15 bid amount of a competing bidder, the procurement officer shall  
16 dismiss the protest if the amount of the bid of the competing



1 bidder is due to inadvertent error amounting to not more than  
2 one per cent of the bid amount of the competing bidder."

3 SECTION 2. Section 103D-701, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

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

11 If a protest involves the challenge of a bid amount that is  
12 the result of inadvertent error, the protest shall be subject to  
13 section 103D-302."

14 SECTION 3. Section 103D-709, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "§103D-709 **Administrative proceedings for review.** (a)  
17 The several hearings officers appointed by the director of the  
18 department of commerce and consumer affairs pursuant to section  
19 26-9(f) shall have jurisdiction to review and determine de novo,  
20 any request from any bidder, offeror, contractor, or person  
21 aggrieved under section 103D-106, or governmental body aggrieved  
22 by a determination of the chief procurement officer, head of a



1 purchasing agency, or a designee of either officer under section  
2 103D-310, 103D-701, or 103D-702.

3 (b) Hearings to review and determine any request made  
4 pursuant to subsection (a) shall commence within twenty-one  
5 calendar days of receipt of the request. The hearings officers  
6 shall have power to issue subpoenas, administer oaths, hear  
7 testimony, find facts, make conclusions of law, and issue a  
8 written decision [~~which~~] that shall be final and conclusive  
9 unless a person or governmental body adversely affected by the  
10 decision commences an appeal in the circuit court of the circuit  
11 where the case or controversy arises under section 103D-710.

12 (c) Only parties to the protest made and decided pursuant  
13 to sections 103D-701, 103D-709(a), 103D-310(b), and [~~+~~]103D-  
14 702(g) [~~+~~] may initiate a proceeding under this section. The  
15 party initiating the proceeding shall have the burden of proof,  
16 including the burden of producing evidence as well as the burden  
17 of persuasion. The degree or quantum of proof shall be a  
18 preponderance of the evidence. All parties to the proceeding  
19 shall be afforded an opportunity to present oral or documentary  
20 evidence, conduct cross-examination as may be required, and  
21 argument on all issues involved. The rules of evidence shall  
22 apply.



1        (d) As used in this subsection, "estimated value of the  
2 contract" means the lowest responsible and responsive bid under  
3 section 103D-302, or the bid amount of the responsible offeror  
4 whose proposal is determined in writing to be the most  
5 advantageous under section 103D-303, as applicable. Any bidder,  
6 offeror, contractor, or person that is a party to a protest of a  
7 solicitation or award of a contract under sections 103D-302 and  
8 103D-303 that is decided pursuant to section 103D-701 may  
9 initiate a proceeding under this section, provided that:

10        (1) The protest concerns a matter that is equal to no less  
11 than ten per cent of the total estimated value of the  
12 contract; and

13        (2) The party initiating the proceeding shall pay to the  
14 department of commerce and consumer affairs a cash or  
15 protest bond in an amount equal to one per cent of the  
16 total estimated value of the contract if the total  
17 estimated value of the contract is \$1,000,000 or more;  
18 provided that in no event shall the required amount of  
19 the cash or protest bond be more than \$50,000.

20        If the initiating party prevails in the administrative  
21 proceeding, the cash or protest bond shall be returned to that  
22 party. If the initiating party does not prevail in the



1 administrative proceeding, fifty per cent of the cash or protest  
 2 bond shall be deposited into the compliance resolution fund,  
 3 established under section 26-9(o), and fifty per cent of the  
 4 cash or protest bond shall be deposited into the general fund.

5 [~~d~~] (e) The hearings officers shall ensure that a record  
 6 of each proceeding which includes the following is compiled:

- 7 (1) All pleadings, motions, intermediate rulings;
- 8 (2) Evidence received or considered, including oral  
 9 testimony, exhibits, and a statement of matters  
 10 officially noticed;
- 11 (3) Offers of proof and rulings thereon;
- 12 (4) Proposed findings of fact;
- 13 (5) A recording of the proceeding which may be transcribed  
 14 if judicial review of the written decision is sought  
 15 under section 103D-710.

16 [~~e~~] (f) No action shall be taken on a solicitation or an  
 17 award of a contract while a proceeding is pending, if the  
 18 procurement was previously stayed under section 103D-701(f).

19 [~~f~~] (g) The hearings officer shall decide whether the  
 20 determinations of the chief procurement officer or the chief  
 21 procurement officer's designee were in accordance with the  
 22 Constitution, statutes, rules, and the terms and conditions of



1 the solicitation or contract, and shall order such relief as may  
2 be appropriate in accordance with this chapter.

3 [~~g~~] (h) The policy board shall adopt such other rules as  
4 may be necessary to ensure that the proceedings conducted  
5 pursuant to this section afford all parties an opportunity to be  
6 heard."

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.



**Report Title:**

Procurement; Bid Protest; Inadvertent Errors; Administrative Proceedings

**Description:**

Requires the dismissal of a protest of an award of a contract if the reason for the protest is based upon an error in a bid that is less than 1% of the bid amount. Limits the protested amount in an administrative proceeding to no less than 10% of the total estimated value of the contract. Requires the initiator of an administrative proceeding to pay a cash or protest bond equal to 1% of the total estimated value of the contract and not more than \$50,000. (HD1)

