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# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

PART I

1           SECTION 1. Chapter 103D, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:  
4           "§103D-       Final decision; time. Notwithstanding any other  
5 law to the contrary, if a request for hearing is made pursuant  
6 to section 103D-709 with regard to any procurement, a final  
7 decision shall be issued within thirty days of the receipt of  
8 the request for hearing. If a request for judicial review is  
9 made pursuant to section 103D-710, a decision shall be issued  
10 within thirty days of the filing of the application for judicial  
11 review. However, in any event, if a request for hearing or an  
12 application for judicial review is not resolved by the thirtieth  
13 day the administrative body or court shall lose jurisdiction,  
14 and the award of the procurement shall not be disturbed. All  
15 time limitations on actions, as provided for in section  
16 103D-712, shall remain in effect."



PART II

SECTION 2. Section 103D-302, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of invitations for bids, awards, or contracts based on such bid mistakes, shall be permitted in accordance with rules adopted by the policy board. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the public or to fair competition shall be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the chief procurement officer or head of a purchasing agency.

If a bid protest under section 103D-701 is based upon the bid amount of a competing bidder, the procurement officer shall dismiss the protest if the amount of the bid of the competing bidder is due to inadvertent error amounting to not more than one per cent of the bid amount of the competing bidder."

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



1           "(b) The chief procurement officer or a designee, prior to  
2 the commencement of an administrative proceeding under section  
3 103D-709 or an action in court pursuant to section 103D-710, may  
4 settle and resolve a protest concerning the solicitation or  
5 award of a contract. This authority shall be exercised in  
6 accordance with rules adopted by the policy board.

7           If a protest involves the challenge of a bid amount under  
8 section 103D-302 that is the result of inadvertent error, the  
9 protest shall be subject to section 103D-302(g)."

10           SECTION 4. Section 103D-709, Hawaii Revised Statutes, is  
11 amended to read as follows:

12           "**§103D-709 Administrative proceedings for review.** (a)  
13 The several hearings officers appointed by the director of the  
14 department of commerce and consumer affairs pursuant to section  
15 26-9(f) shall have jurisdiction to review and determine de novo,  
16 any request from any bidder, offeror, contractor, or person  
17 aggrieved under section 103D-106, or governmental body aggrieved  
18 by a determination of the chief procurement officer, head of a  
19 purchasing agency, or a designee of either officer under section  
20 103D-310, 103D-701, or 103D-702.

21           (b) Hearings to review and determine any request made  
22 pursuant to subsection (a) shall commence within twenty-one



1 calendar days of receipt of the request. The hearings officers  
2 shall have power to issue subpoenas, administer oaths, hear  
3 testimony, find facts, make conclusions of law, and issue a  
4 written decision [~~which~~] that shall be final and conclusive  
5 unless a person or governmental body adversely affected by the  
6 decision commences an appeal in the circuit court of the circuit  
7 where the case or controversy arises under section 103D-710.

8 (c) Only parties to the protest made and decided pursuant  
9 to sections 103D-701, 103D-709(a), 103D-310(b), and [+]103D-  
10 702(g) [+] may initiate a proceeding under this section. The  
11 party initiating the proceeding shall have the burden of proof,  
12 including the burden of producing evidence as well as the burden  
13 of persuasion. The degree or quantum of proof shall be a  
14 preponderance of the evidence. All parties to the proceeding  
15 shall be afforded an opportunity to present oral or documentary  
16 evidence, conduct cross-examination as may be required, and  
17 argument on all issues involved. The rules of evidence shall  
18 apply.

19 (d) Any bidder, offeror, contractor, or person that is a  
20 party to a protest of a solicitation or award of a contract  
21 under sections 103D-302 and 103D-303 that is decided pursuant to



1 section 103D-701 may initiate a proceeding under this section;  
2 provided that:

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

6 (2) The party initiating the proceeding shall pay to the  
7 department of commerce and consumer affairs a cash or  
8 protest bond in an amount equal to one per cent of the  
9 total estimated value of the contract if the total  
10 estimated value of the contract is \$1,000,000 or more;  
11 provided that in no event shall the required amount of  
12 the cash or protest bond be more than \$50,000.

13 If the initiating party prevails in the administrative  
14 proceeding, the cash or protest bond shall be returned to that  
15 party. If the initiating party does not prevail in the  
16 administrative proceeding, fifty per cent of the cash or protest  
17 bond shall be deposited into the compliance resolution fund,  
18 established under section 26-9(o), and fifty per cent of the  
19 cash or protest bond shall be deposited into the general fund.

20 As used in this subsection, "estimated value of the  
21 contract" means the lowest responsible and responsive bid under  
22 section 103D-302, or the bid amount of the responsible offeror



1 whose proposal is determined in writing to be the most  
2 advantageous under section 103D-303, as applicable.

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

5 (1) All pleadings, motions, intermediate rulings;

6 (2) Evidence received or considered, including oral  
7 testimony, exhibits, and a statement of matters  
8 officially noticed;

9 (3) Offers of proof and rulings thereon;

10 (4) Proposed findings of fact;

11 (5) A recording of the proceeding which may be transcribed  
12 if judicial review of the written decision is sought  
13 under section 103D-710.

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

17 ~~[(f)]~~ (g) The hearings officer shall decide whether the  
18 determinations of the chief procurement officer or the chief  
19 procurement officer's designee were in accordance with the  
20 Constitution, statutes, rules, and the terms and conditions of  
21 the solicitation or contract, and shall order such relief as may  
22 be appropriate in accordance with this chapter.





**Report Title:**

Procurement; Bid Protest; Inadvertent Errors; Administrative Proceedings

**Description:**

Clarifies procurement code to require a final decision to be issued within thirty days of the receipt of the request for hearing. Requires a judicial decision within thirty days of the filing of the application for judicial review. In either case, imposes a thirty day limit for resolution or the award of the procurement stands. 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. (SB687 HD1)

