
A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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[-] provided that if the
7 lowest bid is more than ten per cent higher than the estimated
8 cost of the contract, as determined by the head of the
9 purchasing agency responsible for the procurement in question,
10 the head of the purchasing agency may reject the lowest bid and
11 resolicit bids after modifying the bid requirements as necessary
12 to attract bids within the estimated cost of the contract,
13 including reducing the scope of the work, breaking up large
14 projects into smaller projects or combining like projects to
15 achieve economies of scale. In the event all bids exceed
16 available funds as certified by the appropriate fiscal officer,
17 the head of the purchasing agency responsible for the
18 procurement in question is authorized in situations where time



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

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

8 "**§103D-303 Competitive sealed proposals.** (a) Competitive
9 sealed proposals may be utilized to procure goods, services, or
10 construction designated in rules adopted by the procurement
11 policy board as goods, services, or construction [~~which~~] that
12 are either not practicable or not advantageous to the State to
13 procure by competitive sealed bidding. Competitive sealed
14 proposals may also be utilized when the head of a purchasing
15 agency determines in writing that the use of competitive sealed
16 bidding is either not practicable or not advantageous to the
17 State.

18 (b) Proposals shall be solicited through a request for
19 proposals.

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



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

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

8 (f) Discussions may be conducted with responsible offerors
9 who submit proposals determined to be reasonably susceptible of
10 being selected for award for the purpose of clarification to
11 assure full understanding of, and responsiveness to, the
12 solicitation requirements. Offerors shall be accorded fair and
13 equal treatment with respect to any opportunity for discussion
14 and revision of proposals, and revisions may be permitted after
15 submissions and prior to award for the purpose of obtaining best
16 and final offers. In conducting discussions, there shall be no
17 disclosure of any information derived from proposals submitted
18 by competing offerors.

19 (g) In the event that the lowest price submitted by
20 responsible offerors who submit proposals determined to be
21 reasonably susceptible of being selected for award is more than
22 ten per cent higher than the estimated cost of the contract, as



1 determined by the head of the purchasing agency responsible for
2 the procurement in question, the head of the purchasing agency
3 may resolicit the proposal after modifying the proposal
4 requirements as necessary to attract proposals within the
5 estimated cost of the contract, including reducing the scope of
6 the work, breaking up large projects into smaller projects or
7 combining like projects to achieve economies of scale.

8 [~~g~~] (h) Award shall be made to the responsible offeror
9 whose proposal is determined in writing to be the most
10 advantageous taking into consideration price and the evaluation
11 factors set forth in the request for proposals. No other
12 factors or criteria shall be used in the evaluation. The
13 contract file shall contain the basis on which the award is
14 made.

15 [~~h~~] (i) In cases of awards made under this section,
16 nonselected offerors may submit a written request for debriefing
17 to the chief procurement officer or designee within three
18 working days after the posting of the award of the contract.
19 Thereafter, the head of the purchasing agency shall provide the
20 requester a prompt debriefing in accordance with rules adopted
21 by the policy board. Any protest by the requester pursuant to
22 section 103D-701 following debriefing shall be filed in writing



1 with the chief procurement officer or designee within five
2 working days after the date that the debriefing is completed."

3 SECTION 3. Section 103D-305, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) Procurements of less than \$50,000 for goods,
6 services, or construction shall be made in accordance with
7 procedures set forth in rules adopted by the policy board that
8 are designed to ensure administrative simplicity and as much
9 competition as is practicable; provided that multiple
10 expenditures shall not be created at the inception of a
11 transaction or project so as to evade the requirements of this
12 chapter; and provided further that procurement requirements
13 shall not be artificially divided or parceled so as to
14 constitute a small purchase under this section[-] except as
15 provided under sections 103D-302(h) and 103D-303(g)."

16 SECTION 4. If any provision of this Act, or the
17 application thereof to any person or circumstance is held
18 invalid, the invalidity does not affect other provisions or
19 applications of the Act, which can be given effect without the
20 invalid provision or application, and to this end the provisions
21 of this Act are severable.



H.B. NO. 210

1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect upon its approval.

4

INTRODUCED BY:

Cindy Erens
Mark Dakashine

JAN 22 2009



Report Title:

Procurement; Competitive Sealed Bidding; Competitive Sealed Proposals

Description:

Authorizes the head of a purchasing agency to resolicit bids or proposals with different requirements where the lowest price submitted exceeds ten per cent of the anticipated cost of the contract.

