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## A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1           SECTION 1. The legislature finds that the performance of  
2 state and county contracts is frequently delayed while frivolous  
3 protests of the contract award are resolved. In many cases,  
4 protests are made by aggrieved bidders who are not qualified to  
5 perform the work required by the contract. One such instance  
6 occurred when construction of the Lahaina bypass road on Maui  
7 was delayed for months while the contract award was protested by  
8 a losing bidder who did not have the capability to perform the  
9 work. The protestor did not prevail in the protest and the  
10 contract continued to be awarded to the original party, however,  
11 this protest resulted in needless delays, inconvenience, and  
12 expenses for the State, county, and residents.

13           The legislature further finds that frivolous protests of  
14 contract awards may be deterred by requiring a protesting party  
15 to share some of the risk of protesting the award. Accordingly,  
16 the purpose of this Act is to require protesting parties that do  
17 not prevail to reimburse the chief procurement officer or the



1 purchasing agency for administrative expenses in connection with  
2 the protest.

3 SECTION 2. Section 103D-701, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§103D-701 Authority to resolve protested solicitations  
6 and awards. (a) Any actual or prospective bidder, offeror, or  
7 contractor who is aggrieved in connection with the solicitation  
8 or award of a contract may protest to the chief procurement  
9 officer or a designee as specified in the solicitation. Except  
10 as provided in sections 103D-303 and 103D-304, a protest shall  
11 be submitted in writing within five working days after the  
12 aggrieved person knows or should have known of the facts giving  
13 rise thereto; provided that a protest of an award or proposed  
14 award shall in any event be submitted in writing within five  
15 working days after the posting of award of the contract under  
16 section 103D-302 or 103D-303, if no request for debriefing has  
17 been made, as applicable; provided further that no protest based  
18 upon the content of the solicitation shall be considered unless  
19 it is submitted in writing prior to the date set for the receipt  
20 of offers.

21 (b) The chief procurement officer or a designee, prior to  
22 the commencement of an administrative proceeding under section



1 103D-709 or an action in court pursuant to section 103D-710, may  
2 settle and resolve a protest concerning the solicitation or  
3 award of a contract. This authority shall be exercised in  
4 accordance with rules adopted by the policy board.

5 (c) If the protest is not resolved by mutual agreement,  
6 the chief procurement officer or a designee shall promptly issue  
7 a decision in writing to uphold or deny the protest. The  
8 decision shall:

9 (1) State the reasons for the action taken; and

10 (2) Inform the protestor of the protestor's right to an  
11 administrative proceeding as provided in this part, if  
12 applicable.

13 (d) A copy of the decision under subsection (c) shall be  
14 mailed or otherwise furnished immediately to the protestor and  
15 any other party intervening.

16 (e) A decision under subsection (c) shall be final and  
17 conclusive, unless any person adversely affected by the decision  
18 commences an administrative proceeding under section 103D-709.

19 (f) In the event of a timely protest under subsection (a),  
20 no further action shall be taken on the solicitation or the  
21 award of the contract until the chief procurement officer makes  
22 a written determination that the award of the contract without



1 delay is necessary to protect substantial interests of the  
2 State.

3 (g) In addition to any other relief, when a protest is  
4 sustained and the protestor should have been awarded the  
5 contract under the solicitation but is not, then the protestor  
6 shall be entitled to the actual costs reasonably incurred in  
7 connection with the solicitation, including bid or proposal  
8 preparation costs but not attorney's fees.

9 (h) When a protest is not sustained, the protestor shall  
10 reimburse the chief procurement officer or designee, as  
11 specified in the solicitation, for any administrative expenses  
12 reasonably incurred by the procurement officer or designee,  
13 including per diem and expenses paid to witnesses, in connection  
14 with an administrative proceeding under section 103D-709 or an  
15 action in court pursuant to 103D-710."

16 SECTION 3. This Act does not affect rights and duties that  
17 matured, penalties that were incurred, and proceedings that were  
18 begun, before its effective date.

19 SECTION 4. New statutory material is underscored.  
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1 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

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JAN 23 2009



**Report Title:**

Procurement; Protests

**Description:**

Requires protestors for whom a protest is not sustained to reimburse the chief procurement officer or designee for administrative expenses incurred in connection with an administrative hearing or action in court.

