
A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

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- Procurement statistics. The state procurement
5 office shall keep statistics on solicitations and awards
6 protested under section 103D-701 for the purpose of improving
7 procurement procedures. The statistics shall include
8 information on protests involving inadvertent errors and amounts
9 forfeited from procurement protests."

10 SECTION 2. Section 103D-701, Hawaii Revised Statutes, is
11 amended by amending subsections (b) and (c) to read as follows:

12 "(b) The chief procurement officer or a designee, prior to
13 the commencement of an administrative proceeding under section
14 103D-709 or an action in court pursuant to section 103D-710, may
15 settle and resolve a protest concerning the solicitation or
16 award of a contract[.] within ten business days after the
17 receipt of the protest. This authority shall be exercised in
18 accordance with rules adopted by the policy board.

1 (c) If the protest is not resolved by mutual agreement,
2 the chief procurement officer or a designee shall [~~promptly~~]
3 issue a decision in writing to uphold or deny the protest[~~]~~ no
4 later than twenty business days after receipt of the protest.

5 The decision shall:

- 6 (1) State the reasons for the action taken; and
7 (2) Inform the protestor of the protestor's right to an
8 administrative proceeding as provided in this part, if
9 applicable."

10 SECTION 3. 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 shall be final and conclusive unless a
5 person or governmental body adversely affected by the decision
6 commences an appeal in the circuit court of the circuit where
7 the case or controversy arises under section 103D-710. Hearings
8 officers shall issue written decisions not later than forty-five
9 days from the receipt of the request under subsection (a).

10 (c) Only parties to the protest made and decided pursuant
11 to sections 103D-701, 103D-709(a), 103D-310(b), and [†]103D-
12 702(g) [†] may initiate a proceeding under this section. The
13 party initiating the proceeding shall have the burden of proof,
14 including the burden of producing evidence as well as the burden
15 of persuasion. The degree or quantum of proof shall be [~~a~~
16 ~~preponderance of the~~] clear and convincing evidence. All
17 parties to the proceeding shall be afforded an opportunity to
18 present oral or documentary evidence, conduct cross-examination
19 as may be required, and argument on all issues involved. [~~The~~
20 ~~rules of evidence shall apply.~~] Fact finding under section 91-10
21 shall apply.

1 (d) Any bidder, offeror, contractor, or person that is a
2 party to a protest of a solicitation or award of a contract
3 under section 103D-302 or 103D-303 that is decided pursuant to
4 section 103D-701 may initiate a proceeding under this section;
5 provided that:

6 (1) For contracts with an estimated value of less than
7 \$1,000,000, the protest shall concern a matter that is
8 greater than \$10,000; and

9 (2) For contracts with an estimated value of \$1,000,000 or
10 more, the protest shall concern a matter that is equal
11 to no less than ten per cent of the estimated value of
12 the contract.

13 (e) The party initiating a proceeding under subsection (d)
14 shall pay to the department of commerce and consumer affairs a
15 cash or protest bond in the amount of:

16 (1) \$1,000 for a contract with an estimated value of less
17 than \$500,000;

18 (2) \$2,000 for a contract with an estimated value of at
19 least \$500,000, but less than \$1,000,000; or

20 (3) One-half per cent of the estimated value of the
21 contract or not more than \$10,000, whichever is less,

1 if the estimated value of the contract is \$1,000,000
2 or more.

3 If the initiating party prevails in the proceeding
4 initiated under subsection (d), the cash or protest bond shall
5 be returned to that party. If the initiating party does not
6 prevail in the proceeding initiated under subsection (d), the
7 cash or protest bond shall be deposited into the general fund.

8 ~~(d)~~ (f) The hearings officers shall ensure that a record
9 of each proceeding which includes the following is compiled:

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

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

1 [~~(f)~~] (h) The hearings officer shall decide whether the
2 determinations of the chief procurement officer or the chief
3 procurement officer's designee were in accordance with the
4 Constitution, statutes, rules, and the terms and conditions of
5 the solicitation or contract, and shall order such relief as may
6 be appropriate in accordance with this chapter.

7 [~~(g)~~] (i) The policy board shall adopt such other rules as
8 may be necessary to ensure that the proceedings conducted
9 pursuant to this section afford all parties an opportunity to be
10 heard.

11 (j) As used in this section, "estimated value of the
12 contract" or "estimated value", with respect to a contract,
13 means either the amount of the lowest responsible and responsive
14 bid under section 103D-302 or the bid amount of the responsible
15 offeror whose proposal is determined in writing to be the most
16 advantageous under section 103D-303, as applicable."

17 SECTION 4. Section 103D-710, Hawaii Revised Statutes, is
18 amended as follows:

19 1. By amending subsection (c) to read:

20 "(c) Within [~~twenty~~] ten calendar days of the filing of an
21 application for judicial review, the hearings officer shall
22 transmit the record of the administrative proceedings to the

1 circuit court of the circuit where the case or controversy
2 arises."

3 2. By amending subsection (e) to read:

4 "(e) ~~Upon~~ No later than thirty days from the filing of
5 the application for judicial review, based upon review of the
6 record the circuit court may affirm the decision of the hearings
7 officer issued pursuant to section 103D-709 or remand the case
8 with instructions for further proceedings; or it may reverse or
9 modify the decision and order if substantial rights may have
10 been prejudiced because the administrative findings,
11 conclusions, decisions, or orders are:

12 (1) In violation of constitutional or statutory
13 provisions;

14 (2) In excess of the statutory authority or jurisdiction
15 of the chief procurement officer or head of the
16 purchasing agency;

17 (3) Made upon unlawful procedure;

18 (4) Affected by other error of law;

19 (5) Clearly erroneous in view of the reliable, probative,
20 and substantial evidence on the whole record; or

1 (6) Arbitrary, or capricious, or characterized by abuse of
2 discretion or clearly unwarranted exercise of
3 discretion~~[.];~~;

4 provided that if an application for judicial review is not
5 resolved on or before the thirtieth day from the filing of the
6 application, the circuit court shall lose jurisdiction and the
7 decision of the hearings officer shall not be disturbed. All
8 time limitations on actions, as provided for in section
9 103D-712, shall remain in effect."

10 SECTION 5. This Act does not affect rights and duties that
11 matured, penalties that were incurred, and proceedings that were
12 begun, before its effective date.

13 SECTION 6. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 7. This Act shall take effect on July 1, 2112.

Report Title:

Procurement Code; Protest; Administrative Proceedings

Description:

Imposes time limits on rendering administrative and judicial review decisions; limits protests to those that are a minimum percentage of the contract value; requires posting of a protest bond, to be forfeited if the protesting party does not prevail. Effective July 1, 2112. (HB1671 HD2 PROPOSED)

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