
A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 SECTION 1. Section 103D-709, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§103D-709 Administrative proceedings for review.** (a)
4 The several hearings officers appointed by the director of the
5 department of commerce and consumer affairs pursuant to section
6 26-9(f) shall have jurisdiction to [~~review~~]:

7 (1) Review and determine de novo, any request from any
8 bidder, offeror, contractor, person aggrieved under
9 section 103D-106, or governmental body aggrieved by a
10 determination of the chief procurement officer, head
11 of a purchasing agency, or a designee of either
12 officer under section 103D-310[~~, 103D-701,~~] or 103D-
13 702[~~-~~] pursuant to subsection (b) below; and

14 (2) Review and determine any request from any bidder,
15 offeror, contractor, person, or governmental body
16 aggrieved by a determination of the chief procurement
17 officer, head of a purchasing agency, or a designee of



1 either officer under section 103D-701 pursuant to
2 subsection (c);

3 (b) Hearings to review and determine any request made
4 pursuant to subsection (a) (1) shall be conducted as follows:

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

14 (2) The party initiating the proceeding shall have the
15 burden of proof, including the burden of producing
16 evidence as well as the burden of persuasion. The
17 degree or quantum of proof shall be by a preponderance
18 of the evidence. All parties to the proceeding shall
19 be afforded an opportunity to present oral or
20 documentary evidence, conduct cross-examination as may
21 be required, and present argument on all issues
22 involved;



1 (3) The hearings officer shall ensure that a record of
2 each proceeding that includes the following is
3 compiled:

4 (A) All pleadings, motions, intermediate rulings;

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

8 (C) Offers of proof and rulings thereon;

9 (D) Proposed findings of fact; and

10 (E) A recording of the proceeding which may be
11 transcribed if judicial review of the written
12 decision is sought under section 103D-710; and

13 (4) The hearings officer shall decide whether the
14 determinations of the chief procurement officer or the
15 chief procurement officer's designee are in accordance
16 with the state constitution, statutes, rules, and the
17 terms and conditions of the solicitation or contract,
18 and shall order such relief as may be appropriate in
19 accordance with this chapter.

20 ~~(c) [Only parties to the protest made and decided an~~
21 ~~action taken pursuant to sections 103D-701, 103D-709(a), 103D-~~
22 ~~310(b), and [103D-702(g)] may initiate a proceeding under this~~



1 ~~section. The party initiating the proceeding shall have the~~
2 ~~burden of proof, including the burden of producing evidence as~~
3 ~~well as the burden of persuasion. The degree or quantum of~~
4 ~~proof shall be a preponderance of the evidence. All parties to~~
5 ~~the proceeding shall be afforded an opportunity to present oral~~
6 ~~or documentary evidence, conduct cross examination as may be~~
7 ~~required, and argument on all issues involved. The rules of~~
8 ~~evidence shall apply.] Hearings to review and determine any~~
9 ~~request made pursuant to subsection (a) (2) shall be conducted as~~
10 ~~follows:~~

11 (1) Within ten calendar days of the filing of an
12 application for review pursuant to subsection (a) (2),
13 the chief procurement officer, head of a purchasing
14 agency, or a designee of either officer shall transmit
15 the record of the protest proceedings under section
16 103D-701 to the office of administrative hearings of
17 the department of commerce and consumer affairs;
18 (2) The review shall be scheduled as expeditiously as
19 practicable. It shall be conducted on the record of
20 the protest proceedings under section 103D-701, and
21 briefs and oral argument. New evidence and new issues
22 that have not been raised in the proceedings before



1 the purchasing agency, shall not be introduced, except
2 that the hearings officer appointed to hear the case
3 may, if evidence is offered which is clearly newly
4 discovered evidence and material to the just decision
5 on appeal, admit the same; and

6 (3) No later than thirty days from the filing of the
7 application for administrative review, based upon
8 review of the record, the appointed hearings officer
9 may affirm the decision of the purchasing agency,
10 remand the case with instructions for further
11 proceedings, or reverse the decision if substantial
12 rights may have been prejudiced because the findings,
13 conclusions, decisions, or orders of the purchasing
14 agency are found to be arbitrary, capricious,
15 fraudulent, or clearly erroneous in the view of the
16 reliable, probative, and substantial evidence on the
17 whole record; provided that if an application for
18 review is not resolved on or before the thirtieth day
19 from the filing of the application, the hearings
20 officer shall lose jurisdiction and the decision of
21 the purchasing agency shall not be disturbed. All



1 time limitations on actions, as provided for in
2 section 103D-712, shall remain in effect.

3 (d) ~~[The hearings officers shall ensure that a record of~~
4 ~~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.] Only parties to the protest~~

14 made and decided pursuant to sections 103D-701, 103D-
15 709(a), 103D-310(b), and 103D-702(g) may initiate a
16 proceeding under this section.

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

20 ~~[(f) The hearings officer shall decide whether the~~
21 ~~determinations of the chief procurement officer or the chief~~
22 ~~procurement officer's designee were in accordance with the~~



1 ~~Constitution, statutes, rules, and the terms and conditions of~~
2 ~~the solicitation or contract, and shall order such relief as may~~
3 ~~be appropriate in accordance with this chapter.~~

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

8 SECTION 2. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect on July 1, 2112.



Report Title:

Procurement; Administrative Proceedings

Description:

Limits the hearing officer's review to the record of the procuring agencies below. Limits the review to a review of the written record of the procuring agency's protest proceedings for evidence of decisions that may be arbitrary, capricious, fraudulent, or clearly erroneous. Effective July 1, 2112.
(HB2044 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

