
A BILL FOR AN ACT

RELATING TO THE PROCUREMENT CODE.

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

1 SECTION 1. The legislature finds that protests under the
2 procurement code have delayed the awarding of construction and
3 design-build projects. The legislature further finds that both
4 types of projects have high economic multipliers. Thus, the
5 governor or a county mayor, as applicable, should have the
6 authority for two years to exempt the procurement of these
7 contracts from protests and administrative review of
8 nonresponsible offeror determinations. The legislature intends
9 this Act to authorize the temporary exemption of a procurement
10 from procurement code provisions pertaining only to protests and
11 administrative review of nonresponsible offeror determinations.

12 Because the exemption provided by this Act is so
13 extraordinary, the legislature finds that the public must be
14 ensured of the integrity of the process and actions under an
15 exempt procurement. The legislature further finds that public
16 confidence may be achieved by ensuring that the public has
17 access to all information concerning the procurement, except
18 trade secrets and other proprietary data.



1 The purpose of this Act is to promote economic
2 revitalization by temporarily authorizing the governor or a
3 county mayor to exempt construction or design-build procurements
4 from protests concerning the procurement and the administrative
5 review of a nonresponsible offeror determination. The governor
6 or a county mayor, as applicable, may exempt a procurement only
7 if all information concerning the procurement, except trade
8 secrets and other proprietary data, is released for public
9 inspection.

10 SECTION 2. Chapter 103D, Hawaii Revised Statutes, is
11 amended by adding a new section to part III to be appropriately
12 designated and to read as follows:

13 "§103D-A Temporary exemption of certain construction and
14 design-build procurements from protest and administrative review
15 of nonresponsible offeror determination. (a) The governor or
16 the mayor of a county, as applicable, may exempt a procurement
17 for a construction or design-build contract under the governor's
18 or mayor's jurisdiction from protest under section 103D-701 and
19 administrative review of a nonresponsible offeror determination
20 under section 103D-709 if the following conditions are met:



- 1 (1) The invitation for bids or request for proposals is
2 issued by the head of the purchasing agency between
3 July 1, 2012, and June 30, 2014;
- 4 (2) The governor or mayor requires all bidders or
5 offerors, as a condition for submitting bids or
6 proposals, to agree that all bids or offers, including
7 amendments or revisions, but not trade secrets or
8 other proprietary data designated by the bidders or
9 offerors, shall be released for public inspection upon
10 award of the contract; provided that:
- 11 (A) A bidder or offeror who does not agree to the
12 requirements of this paragraph shall be deemed
13 nonresponsible for the procurement; and
- 14 (B) After award of the contract, information
15 designated as trade secrets or other proprietary
16 data may be disclosed if required by the attorney
17 general or county corporation counsel, as
18 applicable, in accordance with rules of the state
19 procurement office; and
- 20 (3) The governor or mayor agrees to release for public
21 inspection, upon award of the contract, all written
22 evaluations and ratings of bids or offerors by the



1 purchasing agency or evaluation committee for the
2 procurement, if any.

3 The governor or mayor shall establish that a procurement is
4 exempt from protest and administrative review of a
5 nonresponsible offeror determination by issuing a proclamation
6 simultaneously with the issuance of the invitation for bids or
7 request for proposals for the procurement. The proclamation
8 shall be a public record.

9 (b) Simultaneously with the award of a contract for an
10 exempt procurement, the governor or mayor, as applicable, shall
11 release for public inspection the information specified under
12 subsection (a) (2) and (3).

13 (c) The governor or mayor, as applicable, shall post on
14 the state or appropriate county website, as applicable, a list
15 of all price adjustments and change orders approved for a
16 contract, for an exempt procurement. The list of price
17 adjustments and change orders shall be posted on the state or
18 county website within ten days of the end of the quarter in
19 which the price adjustment or change order is made.

20 (d) For the purpose of this section, "nonresponsible
21 offeror determination" means a determination of



1 nonresponsibility of a prospective offeror under section 103D-
2 310(b)."

3 SECTION 3. Section 103D-105, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§103D-105 Public access to procurement information.**

6 Government records relating to procurement shall be available to
7 the public as provided in chapter 92F[-] and, if applicable,
8 section 103D-A. Part I of chapter 92 shall not apply to
9 discussions, deliberations, or decisions required to be
10 conducted or made confidentially under this chapter[-]; provided
11 that if the governor or the mayor of a county exempts a
12 procurement pursuant to section 103D-A, this confidentiality
13 provision shall not be applied to make confidential any
14 information required to be made public under section 103D-A."

15 SECTION 4. Section 103D-303, Hawaii Revised Statutes, is
16 amended by amending subsection (h) to read as follows:

17 "(h) In cases of awards made under this section, non-
18 selected offerors may submit a written request for debriefing to
19 the procurement officer within three working days after the
20 posting of the award of the contract. Thereafter, the
21 procurement officer shall provide the non-selected offeror a
22 prompt debriefing. Any protest by the non-selected offeror



1 pursuant to section 103D-701 following debriefing shall be filed
2 in writing with the procurement officer within five working days
3 after the date upon which the debriefing is completed[-];
4 provided that the protest provision shall not apply to a
5 procurement exempt from protest under section 103D-A."

6 SECTION 5. Section 103D-701, Hawaii Revised Statutes, is
7 amended to read as follows:

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



1 submitted in writing prior to the date set for the receipt of
2 offers.

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

9 (c) If the protest is not resolved by mutual agreement,
10 the chief procurement officer or a designee shall promptly issue
11 a decision in writing to uphold or deny the protest. The
12 decision shall:

- 13 (1) State the reasons for the action taken; and
14 (2) Inform the protestor of the protestor's right to an
15 administrative proceeding as provided in this part, if
16 applicable.

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

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



1 (f) In the event of a timely protest under subsection (a),
2 no further action shall be taken on the solicitation or the
3 award of the contract until the chief procurement officer makes
4 a written determination that the award of the contract without
5 delay is necessary to protect substantial interests of the
6 State.

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

13 (h) This section shall not apply to a procurement for a
14 construction or design-build contract that is exempt from
15 protest under section 103D-A."

16 SECTION 6. Section 103D-709, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) The several hearings officers appointed by the
19 director of the department of commerce and consumer affairs
20 pursuant to section 26-9(f) shall have jurisdiction to review
21 and determine de novo, any request from any bidder, offeror,
22 contractor, person aggrieved under section 103D-106, or



1 governmental body aggrieved by a determination of the chief
2 procurement officer, head of a purchasing agency, or a designee
3 of either officer under section 103D-310, 103D-701, or 103D-
4 702[-]; except that a determination of nonresponsibility of a
5 prospective offeror under section 103D-310(b) shall not be
6 subject to review under this section if the procurement is
7 exempt from review pursuant to section 103D-A."

8 SECTION 7. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 8. This Act shall take effect on July 1, 2012;
11 provided that on June 30, 2014, this Act shall be repealed and
12 sections 103D-105, 103D-303(h), 103D-701, and 103D-709(a),
13 Hawaii Revised Statutes, shall be reenacted in the form in which
14 they read on June 30, 2012.



Report Title:

Procurement; Temporary Exemption from Protest and Administrative Review

Description:

Temporarily authorizes the governor or a county mayor to exempt a construction or design-build procurement from protest concerning the procurement and administrative review of a non responsible offeror determination. Requires, as a condition of the exemption, that all bids and proposals, including amendments or revisions, evaluations, and ratings, but not trade secrets or other proprietary data, be released for public inspection. Requires the posting of the information on the state or applicable county website. Effective July 1, 2012. (HB2122 HD2)

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

