

JAN 20 2012

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 as follows:

3 1. By amending subsection (a) to read:

4 "(a) The several hearings officers appointed by the
5 director of the department of commerce and consumer affairs
6 pursuant to section 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[~~-~~]; 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
18 either officer under section 103D-701; provided that



1 the determination of the chief procurement officer,
2 head of a purchasing agency, or a designee of either
3 officer shall be affirmed unless there is clear and
4 convincing evidence that the decision was arbitrary,
5 capricious, fraudulent, or clearly erroneous."

6 2. By amending subsection (c) to read:

7 "(c) Only parties to the protest made and decided pursuant
8 to sections 103D-701, 103D-709(a), 103D-310(b), and [†]103D-
9 702(g) [†] may initiate a proceeding under this section. The
10 party initiating the proceeding shall have the burden of proof,
11 including the burden of producing evidence as well as the burden
12 of persuasion. The degree or quantum of proof shall be a
13 preponderance of the evidence[-] except for proceedings under
14 subsection (a) (2), for which the degree or quantum of proof
15 shall be clear and convincing evidence. All parties to the
16 proceeding shall be afforded an opportunity to present oral or
17 documentary evidence, conduct cross-examination as may be
18 required, and argument on all issues involved. The rules of
19 evidence shall apply."

20 3. By amending subsection (f) to read:

21 "(f) [~~The~~] Except as provided in subsection (a) (2), the
22 hearings officer shall decide whether the determinations of the



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1 chief procurement officer or the chief procurement officer's
2 designee were in accordance with the Constitution, statutes,
3 rules, and the terms and conditions of the solicitation or
4 contract, and shall order such relief as may be appropriate in
5 accordance with this chapter."

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

9 SECTION 3. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 4. This Act shall take effect upon its approval.

12

INTRODUCED BY: Clarence W. Bush



S.B. NO. 2457

Report Title:

Procurement; Administrative Proceedings

Description:

Requires a hearing officer to affirm the decision of a procurement officer in protests filed under section 103D-701, HRS, unless the procurement officer's decision is shown by clear and convincing evidence to be arbitrary, capricious, fraudulent, or clearly erroneous.

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