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# A BILL FOR AN ACT

RELATING TO CONCESSIONS ON PUBLIC PROPERTY.

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

1           SECTION 1. The legislature finds that concessions on  
2 public property generally provide two main benefits. First,  
3 they satisfy the general public's demand for goods, wares,  
4 merchandise, or services at the properties where the concession  
5 is located. Second, they provide revenue to support the  
6 properties' operations.

7           Currently, the State's concession law provides that a  
8 government agency shall base its award of a concession mainly on  
9 the highest responsible bid. However, the "best value" process,  
10 also known as competitive sealed bid proposals, allows  
11 consideration of each offeror's potential benefit to the general  
12 public, such as enhancement of customers' experiences and not  
13 just the highest concession bid submitted to the government.

14           The purpose of this Act is to amend the requirements for  
15 the awarding of concession contracts on public property.

16           SECTION 2. Section 102-1, Hawaii Revised Statutes, is  
17 amended to read as follows:



1           "~~§102-1 [Definition. The word "concession" as used in~~  
2 ~~this chapter]~~ Definitions. As used in this chapter:

3           "Concession" means the grant to a person of the privilege  
4 to:

5           (1) Conduct operations involving the sale of goods, wares,  
6 merchandise, or services to the general public  
7 including but not limited to food and beverage  
8 establishments, retail stores, motor vehicle rental  
9 operations under chapter 437D, advertising, and  
10 communications and telecommunication services, in or  
11 on buildings or land under the jurisdiction of any  
12 government agency;

13           (2) Operate a parking lot on property owned or controlled  
14 by the State with the exception of buildings,  
15 facilities, and grounds operated by or otherwise under  
16 the jurisdiction of the department of education; and

17           (3) Use, for compensation, space on public property to  
18 display advertising, or to conduct operations for  
19 communications or telecommunications purposes.

20           "Offeror" means a person submitting a bid or proposal, as  
21 the case may be, for a concession."



1 SECTION 3. Section 102-2, Hawaii Revised Statutes, is  
2 amended by amending its title and subsection (a) to read as  
3 follows:

4 "§102-2 Contracts for concessions; bid or proposal  
5 required, exception. (a) Except as otherwise specifically  
6 provided by law, no concession or concession space shall be  
7 leased, let, licensed, rented out, or otherwise disposed of  
8 either by contract, lease, license, permit or any other  
9 arrangement, except under contract let after public notice for  
10 sealed bids or proposals in the manner provided by law; provided  
11 that the duration of the grant of the concession or concession  
12 space shall be related to the investment required but in no  
13 event to exceed fifteen years for the initial term, and if  
14 amended, any then remaining term plus any agreed extension  
15 thereof awarded or granted by the government agency making a  
16 lease or contract or other arrangement relating to a concession;  
17 provided further that and subject to approval by county council  
18 resolution, the fifteen-year limit shall not apply to nonprofit  
19 corporations organized pursuant to chapter 414D."

20 SECTION 4. Section 102-3, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "§102-3   ~~[Qualification of bidders.]~~ Qualifications.  
2   Before any prospective ~~[bidder]~~ offeror is entitled to submit  
3   any bid or proposal for the occupancy of any ~~[such]~~ space, the  
4   prospective ~~[bidder]~~ offeror shall, not less than six calendar  
5   days prior to the day designated for opening bids~~[7]~~ or  
6   proposals, give written notice to the officer charged with  
7   letting the contract of the prospective ~~[bidder's]~~ offeror's  
8   intention to bid~~[7]~~ or submit a proposal, and the officer shall  
9   satisfy oneself of the prospective ~~[bidder's]~~ offeror's  
10   financial ability, experience, and competence to carry out the  
11   terms and conditions of any contract that may be awarded. For  
12   this purpose, the officer may, in the officer's discretion,  
13   require prospective ~~[bidders]~~ offerors to submit answers, under  
14   oath, to questions contained in a form of questionnaire setting  
15   forth a complete statement of the experience, competence, and  
16   financial standing of the prospective ~~[bidders.]~~ offerors.  
17   Whenever it appears to the officer, from answers to the  
18   questionnaire or otherwise, that any prospective ~~[bidder]~~  
19   offeror is not fully qualified and able to carry out the terms  
20   and conditions of the contract that may be awarded, the officer  
21   shall, after affording the prospective ~~[bidder]~~ offeror an



1 opportunity to be heard and if still of the opinion that the  
2 [~~bidder~~] offeror is not fully qualified to carry out the terms  
3 and conditions of the contract that may be awarded, refuse to  
4 receive or consider any bid or proposal offered by the  
5 prospective [~~bidder~~] offeror. The officer charged with letting  
6 the contract shall not divulge or permit to be divulged the  
7 names and the number of persons who have submitted their notice  
8 of intention to bid or submit a proposal until after the opening  
9 of bids[-] or proposals. All information contained in the  
10 answers to questionnaires shall remain confidential, and any  
11 government officer or employee who knowingly divulges or permits  
12 to be divulged any [~~such~~] of that confidential information to  
13 any person not fully entitled thereto shall be fined not more  
14 than \$250. Questionnaires so submitted shall be returned to the  
15 [~~bidders~~] offerors after having served their purpose."

16 SECTION 5. Section 102-4, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "§102-4 Advertisement [~~for bids~~]. [~~Public notice~~]  
19 Advertisement of a call for bids or proposals shall be made  
20 either by:



- 1        (1) Newspaper publication for not less than three  
2            different days statewide, with respect to any state  
3            agency, or county-wide within the particular county  
4            with respect to any county or county agency[-]; or  
5        (2) Online advertisement on the awarding government  
6            agency's internet site; provided that the online  
7            advertisement shall remain posted until the due date  
8            for bids or proposals has passed."

9            SECTION 6. Section 102-5, Hawaii Revised Statutes, is  
10    amended to read as follows:

11            "§102-5 [Bids-] Bid opening; proposal opening; rejection.

12    [The] (a) For a call for bids, the time of opening of [such]  
13    the tenders shall be not less than [five] fifteen days after the  
14    [last publication-] initial advertisement date. All bids shall  
15    be sealed and delivered to the officer advertising therefor and  
16    shall be opened by the officer at the hour and place to be  
17    stated in the call for tenders in the presence of all [bidders]  
18    offerors who attend, and may be inspected by any [bidder-]  
19    offeror.

20            (b) For a call for proposals, the deadline for proposals  
21    shall be not less than thirty days after the initial



1 advertisement date. Proposals shall be opened by the officer so  
2 as to avoid disclosure of the contents to competing offerors and  
3 persons not involved in the evaluation process during the  
4 process of evaluation. A register of proposals shall be  
5 prepared by the officer and shall be open for public inspection  
6 after the contract is awarded.

7 (c) For a call for proposals, discussions may be conducted  
8 with all responsible offerors who submit proposals determined by  
9 the officer as qualified to be selected for a contract award.  
10 Offerors shall be accorded fair and equal treatment with respect  
11 to any opportunity for discussion and revision of proposals.  
12 Revisions may be permitted after submissions and prior to the  
13 award for the purpose of obtaining the best and final offer.

14 (d) All bids [~~which~~] or proposals that do not comply with  
15 the requirements of the call for tenders shall be rejected. The  
16 officer calling for bids or proposals may reject any or all bids  
17 or proposals and waive any defects when in the officer's opinion  
18 [~~such~~] the rejection or waiver will be for the best interest of  
19 the public."

20 SECTION 7. Section 102-6, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "§102-6 Deposits of legal tender, etc., to accompany  
2 ~~bid[-]~~ or proposal. (a) All bids or proposals shall be  
3 accompanied by a deposit of legal tender or by a certificate of  
4 deposit, share certificate, cashier's check, treasurer's check,  
5 teller's check, or official check drawn by, or a certified check  
6 accepted by, a bank, savings institution, or credit union  
7 insured by the Federal Deposit Insurance Corporation or the  
8 National Credit Union Administration, in a sum not less than  
9 five per cent of the amount ~~bid[7]~~ or proposal, payable at sight  
10 or unconditionally assigned to the officer advertising for  
11 tenders[7] or proposals; provided that when the amount of the  
12 bid or proposal exceeds \$50,000, the deposit shall be in a sum  
13 not less than \$2,500 plus two per cent of the amount in excess  
14 of \$50,000.

15           If the [~~bid~~] deposit is in the form of a surety bond, it  
16 shall be issued in accordance with subsection (b).

17           (b) A bid or proposal may be accompanied by a surety bond  
18 executed to the officer calling for bids or proposals by the  
19 [~~bidder~~] offeror as principal and by any bonding company listed  
20 in the United States Treasury List; provided that the bond  
21 furnished by any surety listed shall not exceed the bonding





1 capacity rating of that surety on the Treasury List; in a sum of  
2 equal amount, conditioned upon the [~~bidder~~] offeror entering  
3 into the contract and furnishing satisfactory security within  
4 ten days after the award or within any further time as the  
5 officer may allow, if the [~~bidder~~] offeror is awarded the  
6 contract."

7 SECTION 8. Section 102-7, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "§102-7 Forfeiture of deposits, return thereof. If the  
10 [~~bidder~~] offeror to whom the contract is awarded fails or  
11 neglects to enter into the contract and furnish satisfactory  
12 security, as required by sections 102-11 and 102-12, within ten  
13 days after the award or within [~~such further~~] an additional  
14 period of time as the officer awarding the contract may allow,  
15 the officer shall pay the amount of the deposit into the  
16 treasury as a realization of the State, county or other  
17 governmental agency, as the case may be. If the contract is  
18 entered into and the security furnished within the required  
19 time, the deposit, certificate, or check shall be returned to  
20 the successful [~~bidder~~] offeror. The deposits made by the  
21 unsuccessful [~~bidders~~] offerors shall be returned to them after



1 the contract is entered into or, if the contract is not awarded  
2 or entered into, after the officer's determination to publish  
3 another call for tenders."

4 SECTION 9. Section 102-8, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "§102-8 Bond may be substituted for deposits. In lieu of  
7 the deposits prescribed by section 102-6, a bid or proposal may  
8 be accompanied by a surety bond executed to the officer calling  
9 for bids or proposals by the [~~bidder~~] offeror as principal and  
10 by any corporation organized for the purpose of becoming surety  
11 on bonds, authorized under the laws of the United States or of  
12 the State to act as surety and doing business in the State under  
13 the laws of the United States or of the State, if a foreign  
14 corporation, and under the laws of the State, if a Hawaii  
15 corporation, as surety, in a penal sum of equal amount,  
16 conditioned upon the [~~bidder~~] offeror entering into the contract  
17 and furnishing satisfactory security within ten days after the  
18 award or within any further time as the officer may allow, if  
19 the [~~bidder~~] offeror is awarded the contract."

20 SECTION 10. Section 102-9, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "§102-9 [~~Contracts to be in writing; highest responsible~~  
2 ~~bidder.~~] Awarding of contracts. (a) All [~~such~~] contracts shall  
3 be in writing[~~7~~] and shall be executed by the officer letting  
4 the contract in the name of the State, county, or the board,  
5 bureau, or commission thereof authorized to let contracts in its  
6 own name, as the case may be [~~7~~and].

7           (b) For a call for bids, the award shall be made with the  
8 highest responsible [~~bidder~~], offeror, if [~~such bidder~~] an  
9 offeror qualifies by providing the security required by sections  
10 102-11 and 102-12. If the highest and best bid or any other bid  
11 is rejected, or if the [~~bidder~~] offeror to whom the contract was  
12 awarded fails to enter into the contract and furnish  
13 satisfactory security, the officer may, in the officer's  
14 discretion, award the contract to the next highest and best  
15 remaining responsible [~~bidder.~~] offeror.

16           (c) For a call for proposals, the officer shall designate  
17 a review committee consisting of a minimum of three persons. In  
18 designating the members of the review committee, the officer  
19 shall ensure the impartiality and independence of committee  
20 members. The committee shall review and evaluate all proposals  
21 and other pertinent information and prepare a list of qualified



1 offerors. The committee shall rank a minimum of three offerors  
2 based on the review and evaluation of the proposals and other  
3 pertinent information and send the ranking to the officer. The  
4 officer shall negotiate a contract with the first ranked  
5 offeror. If the parties are unable to come to an agreement on  
6 the terms of the final contract, the officer may decline to  
7 award the contract to the highest ranked offeror and negotiate  
8 directly with the next highest ranked offeror. The process may  
9 be repeated by the officer until an acceptable contract is  
10 negotiated. The contract file shall document the reasons for  
11 the awarding of the contract to the eventual awardee and the  
12 reasons for failure to award the contract to any higher ranked  
13 offeror.

14 (d) All persons involved in the review, evaluation, or  
15 awarding of contracts under this section shall adhere to all  
16 requirements of ethical public procurement under section  
17 103D-101."

18 SECTION 11. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20



# S.B. NO. 1535

1 SECTION 12. This Act shall take effect on July 1, 2019.

2

INTRODUCED BY: AM.D. [Signature]

**By Request**



# S.B. NO. 1535

**Report Title:**

Concessions; Public Property; Bids; Proposals

**Description:**

Allows proposals to be submitted for concessions on public property. Establishes criteria for acceptance and awarding of proposals for concessions on public property. Specifies advertising requirements for bids or proposals and allows for online advertising. Requires that concession contracts be awarded by a procurement officer based on the rankings of a committee of a minimum of three individuals designated by the procurement officer to review and evaluate proposals from offerors. Requires that all persons involved in the review, evaluation, or awarding of concession contracts adhere to all requirements of ethical public procurement under section 103D-101, Hawaii Revised Statutes.

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