
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 part III to be appropriately
3 designated and to read as follows:

4 "§103D- Competitive sealed bidding; median bid method.

5 (a) Contracts shall be awarded by competitive sealed bidding as
6 provided in this section or section 103D-302, except as
7 otherwise provided in section 103D-301. Awards of contracts by
8 competitive sealed bidding may be made after single or multi-
9 step bidding. Competitive sealed bidding does not include
10 negotiations with bidders after the receipt and opening of bids.
11 Award is based on the criteria set forth in the invitation for
12 bids.

13 (b) An invitation for bids shall be issued and shall
14 include a purchase description and all contractual terms and
15 conditions applicable to the procurement. If the invitation for
16 bids is for construction, it shall specify that all bids include
17 the name of each person or firm to be engaged by the bidder as a



1 joint contractor or subcontractor in the performance of the
2 contract and the nature and scope of the work to be performed by
3 each. Construction bids that do not comply with the
4 requirements of this subsection may be accepted if acceptance is
5 in the best interest of the State and the value of the work to
6 be performed by the joint contractor or subcontractor is equal
7 to or less than one per cent of the total bid amount.

8 (c) Adequate public notice of the invitation for bids
9 shall be given a reasonable time before the date set forth in
10 the invitation for the opening of bids. The policy board shall
11 adopt rules that specify:

12 (1) The form that the notice is to take;

13 (2) What constitutes a reasonable interim between
14 publication and bid opening; and

15 (3) How notice may be published, including publication in
16 a newspaper of general circulation, notice by mail to
17 all persons on any applicable bidders mailing list,
18 publication by any public or private telecommunication
19 information network, or any other method of
20 publication it deems to be effective.



1 (d) Bids shall be opened publicly in the presence of one
2 or more witnesses, at the time and place designated in the
3 invitation for bids. The amount of each bid and other relevant
4 information specified by rule, together with the name of each
5 bidder shall be recorded. The record and each bid shall be open
6 to public inspection.

7 (e) Bids shall be unconditionally accepted without
8 alteration or correction, except as authorized in this chapter
9 or by rules adopted by the policy board.

10 (f) Bids shall be evaluated based on the requirements set
11 forth in the invitation for bids. These requirements may
12 include criteria to determine acceptability such as inspection,
13 testing, quality, workmanship, delivery, and suitability for a
14 particular purpose. Those criteria that will affect the bid
15 price and be considered in evaluation for award shall be
16 objectively measurable, such as discounts; transportation costs;
17 total or life cycle costs; and the bidder's past performance, if
18 available. The invitation for bids shall set forth the
19 evaluation criteria to be used. No criteria may be used in bid
20 evaluation that are not set forth in the invitation for bids.



1 (g) Correction or withdrawal of inadvertently erroneous
2 bids before or after award, or cancellation of invitations for
3 bids, awards, or contracts based on those bid mistakes, shall be
4 permitted in accordance with rules adopted by the policy board.
5 After bid opening no changes in bid prices or other provisions
6 of bids prejudicial to the interest of the public or to fair
7 competition shall be permitted. Except as otherwise provided by
8 rule, all decisions to permit the correction or withdrawal of
9 bids, or to cancel awards or contracts based on bid mistakes,
10 shall be supported by a written determination made by the chief
11 procurement officer or head of a purchasing agency.

12 (h) The contract shall be awarded with reasonable
13 promptness by written notice to the lowest responsible and
14 responsive bidder whose bid meets the requirements and criteria
15 set forth in the invitation for bids. In the event all bids
16 exceed available funds as certified by the appropriate fiscal
17 officer, the head of the purchasing agency responsible for the
18 procurement in question in situations where time or economic
19 considerations preclude resolicitation of work of a reduced
20 scope may negotiate an adjustment of the bid price, including
21 changes in the bid requirements, with the low responsible and



1 responsive bidder, in order to bring the bid within the amount
2 of available funds. For construction projects, a purchasing
3 agency may choose to award the bid to the responsible and
4 responsive bidder whose bid is closest to the median of all bids
5 submitted and meets the requirements and criteria set forth in
6 the invitation for bids; provided that the agency shall
7 stipulate in the invitation for bids that the median award
8 method shall be used.

9 For purposes of this subsection, if there is an even number
10 of bidders, the median bidder shall be the bidder whose bid is
11 closest to and lower than the arithmetic mean of the two middle
12 bids.

13 (i) When it is not practicable to initially prepare a
14 purchase description to support an award based on price, an
15 invitation for bids that requests the submission of unpriced
16 offers to be followed by an invitation for bids, which is
17 limited to those bidders whose offers have been qualified under
18 the criteria set forth in the first solicitation, may be used.
19 If a multi-step sealed bidding process is used, the notice and
20 the invitation for bids shall describe each step to be used in
21 soliciting, evaluating, and selecting unpriced offers."



SECTION 2. Section 103D-301, Hawaii Revised Statutes, is amended to read as follows:

"§103D-301 **Methods of source selection.** Unless otherwise authorized by law, all contracts shall be awarded pursuant to the following sections, as applicable:

- (1) Section 103D-302 (Competitive sealed bids);
- (2) Section 103D-303 (Competitive sealed proposals);
- (3) Section 103D-304 (Professional services procurement);
- (4) Section 103D-305 (Small purchases);
- (5) Section 103D-306 (Sole source procurement); ~~[and]~~
- (6) Section 103D-307 (Emergency procurements) ~~[+]~~ ; and
- (7) Section 103D- (Median bid procurement)."

SECTION 3. Section 103D-302, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Contracts shall be awarded by competitive sealed bidding as provided in this section or section 103D- , except as otherwise provided in section 103D-301. Awards of contracts by competitive sealed bidding may be made after single or multi-step bidding. Competitive sealed bidding does not include negotiations with bidders after the receipt and opening of bids.



1 Award is based on the criteria set forth in the invitation for
2 bids."

3 SECTION 4. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 5. This Act shall take effect on July 1, 2050.



Report Title:

Procurement; Competitive Sealed Bidding; Median Bid Procurement

Description:

Allows purchasing agencies to use the median bid method of procurement. Effective 7/1/2050. (SD2)

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