

JAN 19 2024

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# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1           SECTION 1. The legislature finds that the process for  
2 protesting a procurement solicitation, award, or proposed award  
3 is confusing and raises questions regarding the fairness of the  
4 process. Consequently, agencies have taken inconsistent  
5 positions with respect to when a bidder is aggrieved.

6           The purpose of this Act is to clearly define when a protest  
7 is required to be submitted. If a protest is based on the  
8 contents of the solicitation, a protest is required at least one  
9 day prior to the date set for the receipt of offers. In all  
10 other cases, a protest is due within seven calendar days after  
11 official action is taken, such as when an award is made. It is  
12 not the legislature's intent to dissuade bidders from raising  
13 objections with other bids prior to award. It is the  
14 legislature's intent to encourage the agency to engage with  
15 bidders throughout the entire procurement process.

16           SECTION 2. Section 103D-701, Hawaii Revised Statutes, is  
17 amended to read as follows:



1           "**§103D-701 Authority to resolve protested solicitations**  
2 **and awards.** (a) Any actual or prospective bidder, offeror, or  
3 contractor who is aggrieved in connection with the solicitation  
4 or award of a contract may protest to the chief procurement  
5 officer or a designee as specified in the solicitation. Except  
6 as provided in sections 103D-303 and 103D-304, a protest shall  
7 be submitted in writing within [~~five working days after the~~  
8 ~~aggrieved person knows or should have known of the facts giving~~  
9 ~~rise thereto; provided that a protest of an award or proposed~~  
10 ~~award shall in any event be submitted in writing within five~~  
11 ~~working days]~~ seven calendar days after the posting of award of  
12 the contract under section 103D-302 or 103D-303, if no request  
13 for debriefing has been made, as applicable; provided further  
14 that no protest based upon the content of the solicitation shall  
15 be considered unless it is submitted in writing one day prior to  
16 the date set for the receipt of offers.

17           (b) The chief procurement officer or a designee, prior to  
18 the commencement of an administrative proceeding under section  
19 103D-709 or an action in court pursuant to section 103D-710,  
20 shall use their best efforts to resolve concerns raised by the  
21 protesting party through open and frank discussion and may



1 settle and resolve a protest concerning the solicitation or  
2 award of a contract. This authority shall be exercised in  
3 accordance with rules adopted by the policy board.

4 (c) The chief procurement officer or a designee shall  
5 resolve any protest as expeditiously as possible. If the  
6 protest is not resolved by mutual agreement, the chief  
7 procurement officer or a designee shall issue a written decision  
8 to uphold or deny the protest. The decision shall:

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

13 If the protest of a construction contract or airport contract  
14 that is awarded pursuant to section 103D-302 or 103D-303 is not  
15 resolved by mutual agreement, the chief procurement officer or a  
16 designee shall issue a written decision to uphold or deny the  
17 protest within seventy-five calendar days of receipt of the  
18 protest; provided that the chief procurement officer or a  
19 designee may grant an extension based on written justification  
20 of the extenuating circumstances; provided further that the  
21 extension shall not exceed forty-five calendar days.



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

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

7 (f) In the event of a timely protest under subsection (a),  
8 no further action shall be taken on the solicitation or the  
9 award of the contract until the chief procurement officer makes  
10 a written determination that the award of the contract without  
11 delay is necessary to protect substantial interests of the  
12 State.

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

19 (h) For the purposes of this section, a party is not  
20 aggrieved until official action, adverse to it, has been taken."



1 SECTION 3. Section 103D-709, Hawaii Revised Statutes, is  
2 amended by amending subsection (d) to read as follows:

3 "(d) Any bidder, offeror, contractor, or person that is a  
4 party to a protest of a solicitation or award of a contract  
5 under section 103D-302 or 103D-303 that is decided pursuant to  
6 section 103D-701 may initiate a proceeding under this section[~~+~~  
7 ~~provided that,~~] if any of the following conditions are met:

8 (1) For contracts with an estimated value of less than  
9 \$1,000,000, the protest concerns a matter that is  
10 greater than \$10,000; or

11 (2) For contracts with an estimated value of \$1,000,000 or  
12 more, the protest concerns a matter that is equal to  
13 no less than [~~ten~~] five per cent of the estimated  
14 value of the contract."

15 SECTION 4. This Act does not affect rights and duties that  
16 matured, penalties that were incurred, and proceedings that were  
17 begun before its effective date.

18 SECTION 5. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20 SECTION 6. This Act shall take effect upon its approval.

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S.B. NO. 2570

INTRODUCED BY: *Anne Mercado K*



# S.B. NO. 2570

**Report Title:**

Hawaii Public Procurement Code; Administrative Proceedings for Review; Protest

**Description:**

Requires a protest to be submitted within seven calendar days after the posting of award of the contract. Establishes that a party is not aggrieved until official action, adverse to that party, has been taken. Amends the minimum per cent value of a contract required for parties to a protest of an award to initiate proceedings from ten per cent to five per cent.

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

