
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 to read as follows:

3 **"103D-709 Administrative proceedings for review.** (a) The
4 several hearings officers appointed by the director [~~of the~~
5 ~~department~~] of commerce and consumer affairs pursuant to section
6 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
13 103D-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



1 either officer under section 103D-701 as provided in
2 subsection (c).

3 (b) Hearings to review and determine any request made
4 pursuant to subsection ~~[(a)]~~ (a)(1) shall ~~[commence]~~ be
5 conducted as follows:

6 (1) Hearings shall commence within twenty-one calendar
7 days of receipt of the request. The hearings officers
8 shall have power to issue subpoenas, administer oaths,
9 hear testimony, find facts, make conclusions of law,
10 and issue a written decision which shall be final and
11 conclusive unless a person or governmental body
12 adversely affected by the decision commences an appeal
13 in the circuit court of the circuit where the case or
14 controversy arises under section 103D-710~~[-]~~;

15 (2) The party initiating the proceeding shall have the
16 burden of proof, including the burden of producing
17 evidence as well as the burden of persuasion. The
18 degree or quantum of proof shall be a preponderance of
19 the evidence. All parties to the proceeding shall be
20 afforded an opportunity to present oral or documentary
21 evidence, conduct cross-examination as may be



1 required, and argument on all issues involved. The
2 rules of evidence shall apply;

3 (3) The hearings officers shall ensure that a record is
4 compiled of each proceeding which shall include the
5 following:

6 (i) All pleadings, motions, and intermediate rulings;

7 (ii) Evidence received or considered, including oral
8 testimony, exhibits, and a statement of matters
9 officially noticed;

10 (iii) Offers of proof and rulings thereon;

11 (iv) Proposed findings of fact; and

12 (v) A recording of the proceeding which may be
13 transcribed if judicial review of the written
14 decision is sought under section 1030-710; and

15 (4) The hearings officer shall decide whether the
16 determinations of the chief procurement officer or the
17 chief procurement officer's designee are in accordance
18 with the Hawaii State Constitution, statutes, rules,
19 and the terms and conditions of the solicitation or
20 contract, and shall order such relief as may be
21 appropriate in accordance with this chapter.



1 (c) ~~[Only parties to the protest made and decided pursuant~~
2 ~~to sections 103D 701, 103D 709(a), 103D 310(b), and 103D 702(g)~~
3 ~~may initiate a proceeding under this section. The party~~
4 ~~initiating the proceeding shall have the burden of proof,~~
5 ~~including the burden of producing evidence as well as the burden~~
6 ~~of persuasion. The degree or quantum of proof shall be a~~
7 ~~preponderance of the evidence. All parties to the proceeding~~
8 ~~shall be afforded an opportunity to present oral or documentary~~
9 ~~evidence, conduct cross examination as may be required, and~~
10 ~~argument on all issues involved. The rules of evidence shall~~
11 ~~apply.] Hearings to review and determine any request made~~
12 ~~pursuant to subsection (a)(2) shall be conducted as follows:~~

- 13 (1) Within ten calendar days of the filing of an
14 application for review pursuant to subsection (a)(2),
15 the chief procurement officer, head of a purchasing
16 agency, or a designee of either officer shall transmit
17 the record of the protest proceedings under section
18 103D-701 to the office of administrative hearings of
19 the department of commerce and consumer affairs;
- 20 (2) The review shall be scheduled as expeditiously as
21 practicable. The review shall be conducted based upon
22 the record of the protest proceedings under section



1 103D-701, and briefs and oral argument. No new
2 evidence or new issues not raised in the proceedings
3 before the procuring agency shall be introduced,
4 except that the hearings officer appointed to hear the
5 case, if evidence is offered that is clearly newly
6 discovered evidence and material to the just decision
7 on appeal, may admit new evidence; and
8 (3) No later than thirty days from the filing of the
9 application for administrative review, based upon
10 review of the record, the appointed hearings officer:
11 (A) Shall affirm the decision of the purchasing
12 agency;
13 (B) Remand the case with instructions for further
14 proceedings; or
15 (C) Reverse the decision, but only if substantial
16 rights may have been prejudiced because the
17 findings, conclusions, decisions, or orders of
18 the purchasing agency are found to be arbitrary,
19 capricious, fraudulent, or clearly erroneous in
20 view of the reliable, probative, and substantial
21 evidence on the whole record;



1 provided that if an application for review is not resolved by
2 the thirtieth day from the filing of the application, the
3 hearings officer shall lose jurisdiction and the decision of the
4 purchasing agency shall not be disturbed. All time limitations
5 on actions, as provided for in section 103D-712, shall remain in
6 effect.

7 (d) ~~[The hearings officers shall ensure that a record of~~
8 ~~each proceeding which includes the following is compiled:~~
9 (1) ~~All pleadings, motions, intermediate rulings,~~
10 (2) ~~Evidence received or considered, including oral~~
11 ~~testimony, exhibits, and a statement of matters~~
12 ~~officially noticed,~~
13 (3) ~~Offers of proof and rulings thereon,~~
14 (4) ~~Proposed findings of fact,~~
15 (5) ~~A recording of the proceeding which may be transcribed~~
16 ~~if judicial review of the written decision is sought under~~
17 ~~section 103D-710.] Only parties to proceedings under sections~~
18 103D-310, 103D-701, 103D-709, and 103D0-702 may initiate a
19 proceeding under this section.

20 (e) No action shall be taken on a solicitation or an award
21 of a contract while a proceeding is pending, if the procurement
22 was previously stayed under section 103D-701(f).



1 [~~(f)~~ ~~The hearings officer shall decide whether the~~
2 ~~determinations of the chief procurement officer or the chief~~
3 ~~procurement officer's designee were in accordance with the~~
4 ~~Constitution, statutes, rules, and the terms and conditions of~~
5 ~~the solicitation or contract, and shall order such relief as may~~
6 ~~be appropriate in accordance with this chapter.~~

7 ~~(g)]~~ (f) The policy board shall adopt such other rules as
8 may be necessary to ensure that the proceedings conducted
9 pursuant to this section afford all parties an opportunity to be
10 heard. "

11 SECTION 2. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

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

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



Report Title:

Procurement; Administrative Proceedings

Description:

Amends administrative review proceedings under Hawaii public procurement code. (SD1)

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

