
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 be appropriately designated
3 and to read as follows:

4 "§103D- Procurement statistics. The state procurement
5 office shall keep statistics on solicitations and awards
6 protested under section 103D-701 for the purpose of improving
7 procurement procedures. The statistics shall include
8 information on protests involving inadvertent errors and amounts
9 forfeited from procurement protests."

10 SECTION 2. Section 103D-701, Hawaii Revised Statutes, is
11 amended by amending subsections (b) and (c) to read as follows:

12 "(b) The chief procurement officer or a designee, prior to
13 the commencement of an administrative proceeding under section
14 103D-709 or an action in court pursuant to section 103D-710, may
15 settle and resolve a protest concerning the solicitation or
16 award of a contract[-] within ten business days after the
17 receipt of the protest. This authority shall be exercised in
18 accordance with rules adopted by the policy board.



1 (c) If the protest is not resolved by mutual agreement,
2 the chief procurement officer or a designee shall [~~promptly~~]
3 issue a decision in writing to uphold or deny the protest[~~-~~] no
4 later than twenty business days after receipt of the protest.

5 The decision shall:

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

10 In addition, a record of the protest shall be compiled and shall
11 include evidence received or considered, including oral
12 testimony, exhibits, and a statement of the matters officially
13 noticed, and proposed findings of fact."

14 SECTION 3. Section 103D-709, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"103D-709 Administrative proceedings for review.** (a) The
17 several hearings officers appointed by the director [~~of the~~
18 ~~department~~] of commerce and consumer affairs pursuant to section
19 26-9(f) shall have jurisdiction to [~~review~~]:

- 20 (1) Review and determine de novo, any request from any
21 bidder, offeror, contractor, or person aggrieved under
22 section 103D-106, or governmental body aggrieved by a



1 determination of the chief procurement officer, head
2 of a purchasing agency, or a designee of either
3 officer under section 103D-310[~~, 103D-701,~~] or
4 103D-702[~~-~~]; and

5 (2) Review and determine, as provided in subsection (c),
6 any request from any bidder, offeror, contractor,
7 person, or governmental body aggrieved by a
8 determination of the chief procurement officer, head
9 of a purchasing agency, or a designee of either
10 officer under section 103D-701.

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

14 (1) Hearings shall commence within twenty-one calendar
15 days of receipt of the request. The hearings officers
16 shall have power to issue subpoenas, administer oaths,
17 hear testimony, find facts, make conclusions of law,
18 and issue a written decision which shall be final and
19 conclusive unless a person or governmental body
20 adversely affected by the decision commences an appeal
21 in the circuit court of the circuit where the case or
22 controversy arises under section 103D-710. Hearings



1 officers shall issue written decisions no later than
2 forty-five days from the receipt of the request under
3 subsection (a)(1);

4 (2) The party initiating the proceeding shall have the
5 burden of proof, including the burden of producing
6 evidence and the burden of persuasion. The degree or
7 quantum of proof shall be a preponderance of the
8 evidence. All parties to the proceeding shall be
9 afforded an opportunity to present oral or documentary
10 evidence, conduct cross-examination as may be
11 required, and argue all issues involved. The rules of
12 evidence shall apply;

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

16 (A) All pleadings, motions, and intermediate rulings;

17 (B) Evidence received or considered, including oral
18 testimony, exhibits, and a statement of matters
19 officially noticed;

20 (C) Offers of proof and rulings thereon;

21 (D) Proposed findings of fact; and



1 (E) A recording of the proceeding which may be
2 transcribed if judicial review of the written
3 decision is sought under section 103D-710; and

4 (4) The hearings officer shall decide whether the
5 determinations of the chief procurement officer or the
6 chief procurement officer's designee are in accordance
7 with the Hawaii State Constitution, statutes, rules,
8 and the terms and conditions of the solicitation or
9 contract, and shall order such relief as may be
10 appropriate in accordance with this chapter.

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



- 1 (1) Within ten calendar days of the filing of an
2 application for review pursuant to subsection (a)(2),
3 the chief procurement officer, head of a purchasing
4 agency, or a designee of either officer shall transmit
5 the record of the protest proceedings under section
6 103D-701 to the office of administrative hearings of
7 the department of commerce and consumer affairs;
- 8 (2) The review shall be scheduled as expeditiously as
9 practicable. The review shall be conducted based upon
10 the record of the protest proceedings under section
11 103D-701, and briefs and oral argument. No new
12 evidence or new issues not raised in the proceedings
13 before the procuring agency shall be introduced,
14 except that the hearings officer appointed to hear the
15 case may admit new evidence, if the evidence is
16 clearly newly discovered evidence and material to the
17 just decision on appeal; and
- 18 (3) No later than thirty days from the filing of the
19 application for administrative review, based upon
20 review of the record, the appointed hearings officer:
- 21 (A) Shall affirm the decision of the purchasing
22 agency;



1 (B) Remand the case with instructions for further
2 proceedings; or
3 (C) Reverse the decision, but only if substantial
4 rights may have been prejudiced because the
5 findings, conclusions, decisions, or orders of
6 the purchasing agency are found to be arbitrary,
7 capricious, fraudulent, or clearly erroneous in
8 view of the reliable, probative, and substantial
9 evidence on the whole record;
10 provided that if an application for review is not resolved by
11 the thirtieth day from the filing of the application, the
12 hearings officer shall lose jurisdiction and the decision of the
13 purchasing agency shall not be disturbed.

14 ~~(d) [The hearings officers shall ensure that a record of~~
15 ~~each proceeding which includes the following is compiled:~~

- 16 ~~(1) All pleadings, motions, intermediate rulings;~~
- 17 ~~(2) Evidence received or considered, including oral~~
18 ~~testimony, exhibits, and a statement of matters~~
19 ~~officially noticed;~~
- 20 ~~(3) Offers of proof and rulings thereon;~~
- 21 ~~(4) Proposed findings of fact;~~



1 ~~(5) A recording of the proceeding which may be transcribed~~
2 ~~if judicial review of the written decision is sought under~~
3 ~~section 103D-710.]~~ Any bidder, offeror, contractor, or person
4 that is a party to a protest of a solicitation or award of a
5 contract under section 103D-302 or 103D-303 that is decided
6 pursuant to section 103D-701 may initiate a proceeding under
7 subsection (c); provided that:

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

11 (2) For contracts with an estimated value of \$1,000,000 or
12 more, the protest shall concern a matter that is no
13 less than ten per cent of the estimated value of the
14 contract.

15 (e) The party initiating a proceeding under subsection (d)
16 shall pay to the department of commerce and consumer affairs a
17 cash or protest bond in the amount of:

18 (1) \$1,000 for a contract with an estimated value of less
19 than \$500,000;

20 (2) \$2,000 for a contract with an estimated value of at
21 least \$500,000 but less than \$1,000,000; or



1 (3) One-half per cent of the estimated value of the
2 contract or \$10,000, whichever is less, for a contract
3 with an estimated value of \$1,000,000 or more.

4 If the initiating party prevails in the administrative
5 proceeding, the cash or protest bond shall be returned to that
6 party. If the initiating party does not prevail in the
7 administrative proceeding, the cash or protest bond shall be
8 deposited into the general fund.

9 (f) Only parties to proceedings under sections 103D-310,
10 103D-701, 103D-702, and 103D-709 may initiate a proceeding under
11 this section. All time limitations on actions provided by
12 section 103D-712 shall apply.

13 [~~(e)~~] (g) No action shall be taken on a solicitation or an
14 award of a contract while a proceeding is pending, if the
15 procurement was previously stayed under section 103D-701(f).

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



1 ~~(g)~~] (h) The policy board shall adopt such other rules as
2 may be necessary to ensure that the proceedings conducted
3 pursuant to this section afford all parties an opportunity to be
4 heard.

5 (i) As used in this section, "estimated value of the
6 contract" or "estimated value", with respect to a contract,
7 means either the amount of the lowest responsible and responsive
8 bid under section 103D-302 or the bid amount of the responsible
9 offeror whose proposal is determined in writing to be the most
10 advantageous under section 103D-303, as applicable."

11 SECTION 4. Section 103D-710, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By amending subsection (c) to read:

14 "(c) Within ~~[twenty]~~ ten calendar days of the filing of an
15 application for judicial review, the hearings officer shall
16 transmit the record of the administrative proceedings to the
17 circuit court of the circuit where the case or controversy
18 arises."

19 2. By amending subsection (e) to read:

20 "(e) ~~[Upon]~~ No later than thirty days from the filing of
21 the application for judicial review, based upon review of the
22 record the circuit court may affirm the decision of the hearings



1 officer issued pursuant to section 103D-709 or remand the case
2 with instructions for further proceedings; or it may reverse or
3 modify the decision and order if substantial rights may have
4 been prejudiced because the administrative findings,
5 conclusions, decisions, or orders are:

- 6 (1) In violation of constitutional or statutory
7 provisions;
- 8 (2) In excess of the statutory authority or jurisdiction
9 of the chief procurement officer or head of the
10 purchasing agency;
- 11 (3) Made upon unlawful procedure;
- 12 (4) Affected by other error of law;
- 13 (5) Clearly erroneous in view of the reliable, probative,
14 and substantial evidence on the whole record; or
- 15 (6) Arbitrary, or capricious, or characterized by abuse of
16 discretion or clearly unwarranted exercise of
17 discretion[-];

18 provided that if an application for judicial review is not
19 resolved on or before the thirtieth day from the filing of the
20 application, the circuit court shall lost jurisdiction and the
21 decision of the hearings officer shall not be disturbed. All



1 time limitations on action provided under section 103D-712 shall
2 apply."

3 SECTION 5. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 6. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 7. This Act shall take effect on July 1, 2050.



Report Title:

Procurement; Protest; Administrative Proceedings

Description:

Imposes time limits on rendering administrative and judicial review decisions; limits protests to those that are a minimum percentage of the contract value; requires posting of a protest bond, to be forfeited if the protesting party does not prevail. Effective 07/01/50. (SD2)

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

