



**GOV. MSG. NO. 1276**

EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

June 27, 2012

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 27, 2012, the following bill was signed into law:

HB2265 HD2 SD2 CD1

RELATING TO THE STATE PROCUREMENT  
CODE.

**Act 173 (12)**

NEIL ABERCROMBIE  
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO THE STATE PROCUREMENT CODE.

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."

9 SECTION 2. Section 103D-305, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§103D-305 Small purchases; prohibition against parceling.

12 (a) Procurements of less than \$100,000 for goods or services,  
13 or \$250,000 for construction shall be made in accordance with  
14 procedures set forth in rules adopted by the policy board that  
15 are designed to ensure administrative simplicity and as much  
16 competition as is practicable; provided that multiple  
17 expenditures shall not be created at the inception of a  
18 transaction or project so as to evade the requirements of this



1 chapter; and provided further that procurement requirements  
2 shall not be artificially divided or parceled so as to  
3 constitute a small purchase under this section.

4 (b) Procurements [~~of~~] greater than \$50,000 for  
5 construction under subsection (a) shall require security by [~~a~~]  
6 performance [~~bond~~] and payment bonds, pursuant to section  
7 103D-324, delivered to the [~~purchasing agency~~] procurement  
8 officer, that [~~is~~] are:

- 9 (1) In a form prescribed by the rules of the policy board;  
10 (2) Executed by a surety company authorized to do business  
11 in this State; and  
12 (3) In an amount equal to one hundred per cent of the  
13 price specified in the contract,  
14 or shall otherwise be secured by a performance bond in a manner  
15 satisfactory to the [~~purchasing agency~~.] procurement officer.

16 (c) Procurements of \$25,000 to less than [~~\$100,000~~]  
17 \$250,000 shall be made in accordance with small purchase  
18 procedures; provided that such small purchase procurements  
19 through an electronic system shall be required [~~after the policy~~  
20 ~~board has adopted rules for electronic procurement and provided~~  
21 ~~training to the affected agency]."~~



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

3 "§103D-709 Administrative proceedings for review. (a)

4 The 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 and determine de novo,  
7 any request from any bidder, offeror, contractor, or person  
8 aggrieved under section 103D-106, or governmental body aggrieved  
9 by a determination of the chief procurement officer, head of a  
10 purchasing agency, or a designee of either officer under section  
11 103D-310, 103D-701, or 103D-702.

12 (b) Hearings to review and determine any request made  
13 pursuant to subsection (a) shall commence within twenty-one  
14 calendar days of receipt of the request. The hearings officers  
15 shall have power to issue subpoenas, administer oaths, hear  
16 testimony, find facts, make conclusions of law, and issue a  
17 written decision [~~which~~], not later than forty-five days from  
18 the receipt of the request under subsection (a), that shall be  
19 final and conclusive unless a person or governmental body  
20 adversely affected by the decision commences an appeal in the  
21 circuit court of the circuit where the case or controversy  
22 arises under section 103D-710.

1 (c) Only parties to the protest made and decided pursuant  
2 to sections 103D-701, 103D-709(a), 103D-310(b), and [†]103D-  
3 702(g) [†] may initiate a proceeding under this section. The  
4 party 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 present argument on all issues involved. [~~The rules of evidence~~  
11 ~~shall apply.~~] Fact finding under section 91-10 shall apply.

12 (d) Any bidder, offeror, contractor, or person that is a  
13 party to a protest of a solicitation or award of a contract  
14 under section 103D-302 or 103D-303 that is decided pursuant to  
15 section 103D-701 may initiate a proceeding under this section;  
16 provided that:

- 17 (1) For contracts with an estimated value of less than  
18 \$1,000,000, the protest concerns a matter that is  
19 greater than \$10,000; or
- 20 (2) For contracts with an estimated value of \$1,000,000 or  
21 more, the protest concerns a matter that is equal to



1           no less than ten per cent of the estimated value of  
2           the contract.

3           (e) The party initiating a proceeding falling within  
4           subsection (d) shall pay to the department of commerce and  
5           consumer affairs a cash or protest bond in the amount of:

6           (1) \$1,000 for a contract with an estimated value of less  
7           than \$500,000;

8           (2) \$2,000 for a contract with an estimated value of  
9           \$500,000 or more, but less than \$1,000,000; or

10          (3) One-half per cent of the estimated value of the  
11          contract if the estimated value of the contract is  
12          \$1,000,000 or more; provided that in no event shall  
13          the required amount of the cash or protest bond be  
14          more than \$10,000.

15          If the initiating party prevails in the administrative  
16          proceeding, the cash or protest bond shall be returned to that  
17          party. If the initiating party does not prevail in the  
18          administrative proceeding, the cash or protest bond shall be  
19          deposited into the general fund.

20          ~~[(d)]~~ (f) The hearings officers shall ensure that a record  
21 of each proceeding which includes the following is compiled:

22          (1) All pleadings, motions, intermediate rulings;



- 1           (2) Evidence received or considered, including oral
- 2           testimony, exhibits, and a statement of matters
- 3           officially noticed;
- 4           (3) Offers of proof and rulings thereon;
- 5           (4) Proposed findings of fact;
- 6           (5) A recording of the proceeding which may be transcribed
- 7           if judicial review of the written decision is sought
- 8           under section 103D-710.

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

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

18           ~~[(g)]~~ (i) The policy board shall adopt ~~[such]~~ other rules  
 19 as may be necessary to ensure that the proceedings conducted  
 20 pursuant to this section afford all parties an opportunity to be  
 21 heard.



1       (j) As used in this section, "estimated value of the  
2 contract" or "estimated value," with respect to a contract,  
3 means the lowest responsible and responsive bid under section  
4 103D-302, or the bid amount of the responsible offeror whose  
5 proposal is determined in writing to be the most advantageous  
6 under section 103D-303, as applicable."

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

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

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

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

16       "(e) [~~Upon~~] No later than thirty days from the filing of  
17 the application for judicial review, based upon review of the  
18 record, the circuit court may affirm the decision of the  
19 hearings officer issued pursuant to section 103D-709 or remand  
20 the case with instructions for further proceedings; or it may  
21 reverse or modify the decision and order if substantial rights





1 may have been prejudiced because the administrative findings,  
2 conclusions, decisions, or orders are:

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

15 provided that if an application for judicial review is not  
16 resolved by the thirtieth day from the filing of the  
17 application, the court shall lose jurisdiction and the decision  
18 of the hearings officer shall not be disturbed. All time  
19 limitations on actions, as provided for in section 103D-712,  
20 shall remain in effect."



1 SECTION 5. Act 175, Session Laws of Hawaii 2009, section  
2 14, as amended by section 1 of Act 107, Session Laws of Hawaii  
3 2010, is amended to read as follows:

4 "SECTION 14. This Act shall take effect on July 1, 2009;  
5 provided that[+]

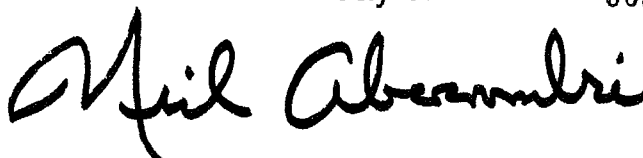
6 ~~(1) Part I]~~ section 1 shall be repealed on July 1, 2012,  
7 and ~~[sections]~~ section 103D-102 ~~[and 103D-305]~~, Hawaii  
8 Revised Statutes, shall be reenacted in the form in  
9 which ~~[they]~~ it read on the day before the effective  
10 date of this Act [~~+~~and

11 ~~(2) Sections 7, 9, and 10 of this Act shall be repealed on~~  
12 ~~July 1, 2011, and sections 103D-709, 103D-710(e), and~~  
13 ~~103D-710(e), Hawaii Revised Statutes, shall be~~  
14 ~~reenacted in the form in which they read on the day~~  
15 ~~before the effective date of this Act]."~~

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

18 SECTION 7. This Act shall take effect on June 30, 2012.

APPROVED this 27 day of JUN, 2012



GOVERNOR OF THE STATE OF HAWAII

