
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-709, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§103D-709 Administrative proceedings for review. (a)
13 The several hearings officers appointed by the director of the
14 department of commerce and consumer affairs pursuant to section
15 26-9(f) shall have jurisdiction to review and determine de novo,
16 any request from any bidder, offeror, contractor, or person
17 aggrieved under section 103D-106, or governmental body aggrieved
18 by a determination of the chief procurement officer, head of a



1 purchasing agency, or a designee of either officer under section
2 103D-310, 103D-701, or 103D-702.

3 (b) Hearings to review and determine any request made
4 pursuant to subsection (a) shall commence within twenty-one
5 calendar days of receipt of the request. The hearings officers
6 shall have power to issue subpoenas, administer oaths, hear
7 testimony, find facts, make conclusions of law, and issue a
8 written decision not later than forty-five days from the receipt
9 of the request under subsection (a), which shall be final and
10 conclusive unless a person or governmental body adversely
11 affected by the decision commences an appeal in the circuit
12 court of the circuit where the case or controversy arises under
13 section 103D-710.

14 (c) Only parties to the protest made and decided pursuant
15 to sections 103D-701, 103D-709(a), 103D-310(b), and [†]103D-
16 702(g) [†] may initiate a proceeding under this section. The
17 party initiating the proceeding shall have the burden of proof,
18 including the burden of producing evidence as well as the burden
19 of persuasion. The degree or quantum of proof shall be a
20 preponderance of the evidence. All parties to the proceeding
21 shall be afforded an opportunity to present oral or documentary
22 evidence, conduct cross-examination as may be required, and



1 argument on all issues involved. [~~The rules of evidence shall~~
2 ~~apply.~~] Fact finding under section 91-10 shall apply.

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:

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 per cent of the estimated value of
14 the contract.

15 (e) The party initiating a proceeding falling within
16 subsection (d) shall pay to the department of commerce and
17 consumer affairs a 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 if the estimated value of the contract is
3 \$1,000,000 or more; provided that the required amount
4 of the cash or protest bond shall not be more than
5 \$10,000.

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

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

- 13 (1) All pleadings, motions, intermediate rulings;
14 (2) Evidence received or considered, including oral
15 testimony, exhibits, and a statement of matters
16 officially noticed;
17 (3) Offers of proof and rulings thereon;
18 (4) Proposed findings of fact;
19 (5) A recording of the proceeding which may be transcribed
20 if judicial review of the written decision is sought
21 under section 103D-710.



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

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

10 ~~(g)~~ (i) The policy board shall adopt such other rules as
11 may be necessary to ensure that the proceedings conducted
12 pursuant to this section afford all parties an opportunity to be
13 heard.

14 (j) As used in this section, "estimated value of the
15 contract" or "estimated value", with respect to a contract,
16 means either the amount of the lowest responsible and responsive
17 bid under section 103D-302 or the bid amount of the responsible
18 offeror whose proposal is determined in writing to be the most
19 advantageous under section 103D-303, as applicable."

20 SECTION 3. Section 103D-710, Hawaii Revised Statutes, is
21 amended as follows:

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



1 "(c) Within [~~twenty~~] ten calendar days of the filing of an
2 application for judicial review, the hearings officer shall
3 transmit the record of the administrative proceedings to the
4 circuit court of the circuit where the case or controversy
5 arises."

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

7 "(e) [~~Upon~~] No later than thirty days from the filing of
8 the application for judicial review, based upon review of the
9 record the circuit court may affirm the decision of the hearings
10 officer issued pursuant to section 103D-709 or remand the case
11 with instructions for further proceedings; or it may reverse or
12 modify the decision and order if substantial rights may have
13 been prejudiced because the administrative findings,
14 conclusions, decisions, or orders are:

- 15 (1) In violation of constitutional or statutory
16 provisions;
- 17 (2) In excess of the statutory authority or jurisdiction
18 of the chief procurement officer or head of the
19 purchasing agency;
- 20 (3) Made upon unlawful procedure;
- 21 (4) Affected by other error of law;



- 1 (5) Clearly erroneous in view of the reliable, probative,
- 2 and substantial evidence on the whole record; or
- 3 (6) Arbitrary, or capricious, or characterized by abuse of
- 4 discretion or clearly unwarranted exercise of
- 5 discretion[-];

6 provided that if an application for judicial review is not
 7 resolved by the thirtieth day from the filing of the
 8 application, the circuit court shall lose jurisdiction and the
 9 decision of the hearings officer shall not be disturbed. All
 10 time limitations on actions, as provided for in section
 11 103D-712, shall remain in effect."

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

15 SECTION 5. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

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

18

INTRODUCED BY: 

JAN 11 2012

H.B. NO. 1671

Report Title:

Procurement Code; 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.

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

