
A BILL FOR AN ACT

RELATING TO THE PROCUREMENT CODE.

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)

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~~]:

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 103D-
13 702[~~-~~] pursuant to subsection (b) below; 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 pursuant to
2 subsection (c);

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

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

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



- 1 (3) The hearings officers shall ensure that a record of
2 each proceeding which includes the following is
3 compiled:
- 4 (A) All pleadings, motions, intermediate rulings;
5 (B) Evidence received or considered, including oral
6 testimony, exhibits, and a statement of matters
7 officially noticed;
- 8 (C) Offers of proof and rulings thereon;
9 (D) Proposed findings of fact;
- 10 (E) A recording of the proceeding which may be
11 transcribed if judicial review of the written
12 decision is sought under section 103D-710; and
- 13 (4) The hearings officer shall decide whether the
14 determinations of the chief procurement officer or the
15 chief procurement officer's designee were in
16 accordance with the state constitution, statutes,
17 rules, and the terms and conditions of the
18 solicitation or contract, and shall order such relief
19 as may be appropriate in accordance with this chapter.
- 20 (c) ~~[Only parties to the protest made and decided an~~
21 ~~action taken pursuant to sections 103D-701, 103D-709(a), 103D-~~
22 ~~310(b), and [103D-702(g)] may initiate a proceeding under this~~



1 ~~section. The party initiating the proceeding shall have the~~
 2 ~~burden of proof, including the burden of producing evidence as~~
 3 ~~well as the burden of persuasion. The degree or quantum of~~
 4 ~~proof shall be a preponderance of the evidence. All parties to~~
 5 ~~the proceeding shall be afforded an opportunity to present oral~~
 6 ~~or documentary evidence, conduct cross examination as may be~~
 7 ~~required, and argument on all issues involved. The rules of~~
 8 ~~evidence shall apply.] Hearings to review and determine any~~
 9 request made pursuant to subsection (a)(2) shall be conducted as
 10 follows:

11 (1) Within ten calendar days of the filing of an
 12 application for review pursuant to subsection (a)(2),
 13 the chief procurement officer, head of a purchasing
 14 agency, or a designee of either officer shall transmit
 15 the record of the protest proceedings under section
 16 103D-701 to the office of administrative hearings of
 17 the department of commerce and consumer affairs;

18 (2) The review shall be scheduled as expeditiously as
 19 practicable. It shall be conducted on the record of
 20 the protest proceedings under section 103D-701, and
 21 briefs and oral argument. No new evidence, nor new
 22 issues not raised in the proceedings before the



1 procuring agency, shall be introduced, except that the
2 hearings officer appointed to hear the case may, if
3 evidence is offered which is clearly newly discovered
4 evidence and material to the just decision on appeal,
5 admit the same; and

6 (3) No later than thirty days from the filing of the
7 application for administrative review, based upon
8 review of the record the appointed hearings office
9 shall affirm the decision of the purchasing agency, or
10 it may either remand the case with instructions for
11 further proceedings or reverse the decision but only
12 if substantial rights may have been prejudiced because
13 the findings, conclusions, decisions, or orders of the
14 purchasing agency are found to be arbitrary,
15 capricious, fraudulent, or clearly erroneous in the
16 view of the reliable, probative, and substantial
17 evidence on the whole record; provided that if an
18 application for review is not resolved by the
19 thirteenth day from the filing of the application, the
20 hearings officer shall lose jurisdiction and the
21 decision of the purchasing agency shall not be
22 disturbed. All time limitations on actions, as



1 provided for in section 103D-712, shall remain in
2 effect.

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

5 ~~(1) All pleadings, motions, intermediate rulings,~~

6 ~~(2) Evidence received or considered, including oral~~
7 ~~testimony, exhibits, and a statement of matters~~
8 ~~officially noticed,~~

9 ~~(3) Offers of proof and rulings thereon,~~

10 ~~(4) Proposed findings of fact,~~

11 ~~(5) A recording of the proceeding which may be transcribed~~
12 ~~if judicial review of the written decision is sought~~

13 ~~under section 103D-710.] Only parties to the protest~~
14 ~~made and decided pursuant to sections 103D-701, 103D-~~
15 ~~709(a), 103D-310(b), and 103D-702(g) may initiate a~~
16 ~~proceeding under this section.~~

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

20 ~~[(f) The hearings officer shall decide whether the~~
21 ~~determinations of the chief procurement officer or the chief~~
22 ~~procurement officer's designee were in accordance with the~~



1 ~~Constitution, statutes, rules, and the terms and conditions of~~
2 ~~the solicitation or contract, and shall order such relief as may~~
3 ~~be appropriate in accordance with this chapter.~~

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

8 SECTION 2. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect on July 1, 2112.



Report Title:

State Procurement Code; Protest of Award

Description:

Limits the hearing officer's review to the record of the procuring agencies below. Limiting the review to a review of the written record of the procuring agency's protest proceedings for evidence of decisions that may be arbitrary, capricious, fraudulent, or clearly erroneous. Effective July 1, 2112.
(HB2122 HD1)

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

