RELATING TO CONCESSIONS ON PUBLIC PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that concessions on public property generally provide two main benefits. First, they satisfy the general public's demand for goods, wares, merchandise, or services at the properties where the concession is located. Second, they provide revenue to support the properties' operations.

Currently, the State's concession law provides that a government agency shall base its award of a concession mainly on the highest responsible bid. However, the "best value" process, also known as competitive sealed bid proposals, allows consideration of each offeror's potential benefit to the general public, such as enhancement of customers' experiences and not just the highest concession bid submitted to the government.

The purpose of this Act is to amend the requirements for the awarding of concession contracts on public property.

SECTION 2. Section 102-1, Hawaii Revised Statutes, is amended to read as follows:
"§102-1  [Definition. The word "concession" as used in this chapter] Definitions. As used in this chapter:

"Concession" means the grant to a person of the privilege to:

(1) Conduct operations involving the sale of goods, wares, merchandise, or services to the general public including but not limited to food and beverage establishments, retail stores, motor vehicle rental operations under chapter 437D, advertising, and communications and telecommunication services, in or on buildings or land under the jurisdiction of any government agency;

(2) Operate a parking lot on property owned or controlled by the State with the exception of buildings, facilities, and grounds operated by or otherwise under the jurisdiction of the department of education; and

(3) Use, for compensation, space on public property to display advertising, or to conduct operations for communications or telecommunications purposes.

"Offeror" means a person submitting a bid or proposal, as the case may be, for a concession."
SECTION 3. Section 102-2, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

"§102-2 Contracts for concessions; bid or proposal required, exception. (a) Except as otherwise specifically provided by law, no concession or concession space shall be leased, let, licensed, rented out, or otherwise disposed of [either] by contract, lease, license, permit, or any other arrangement, except under contract let after public notice for sealed bids or proposals in the manner provided by law; provided that the duration of the grant of the concession or concession space shall be related to the investment required but in no event to exceed fifteen years for the initial term, and if amended, any then remaining term plus any agreed extension thereof awarded or granted by the government agency making a lease or contract or other arrangement relating to a concession; provided further that and subject to approval by county council resolution, the fifteen-year limit shall not apply to nonprofit corporations organized pursuant to chapter 414D."

SECTION 4. Section 102-3, Hawaii Revised Statutes, is amended to read as follows:
§102-3 [Qualification of bidders.] Qualifications.

Before any prospective bidder offeror is entitled to submit any bid or proposal for the occupancy of any such space, the prospective bidder offeror shall, not less than six calendar days prior to the day designated for opening bids[τ] or proposals, give written notice to the officer charged with letting the contract of the prospective bidder's offeror's intention to bid[τ] or submit a proposal, and the officer shall satisfy oneself of the prospective bidder's offeror's financial ability, experience, and competence to carry out the terms and conditions of any contract that may be awarded. For this purpose, the officer may, in the officer's discretion, require prospective bidder offerors to submit answers, under oath, to questions contained in a form of questionnaire setting forth a complete statement of the experience, competence and financial standing of the prospective bidder offerors.

Whenever it appears to the officer, from answers to the questionnaire or otherwise, that any prospective bidder offeror is not fully qualified and able to carry out the terms and conditions of the contract that may be awarded, the officer shall, after affording the prospective bidder offeror an
opportunity to be heard and if still of the opinion that the [bidder] offeror is not fully qualified to carry out the terms and conditions of the contract that may be awarded, refuse to receive or consider any bid or proposal offered by the prospective [bidder.] offeror. The officer charged with letting the contract shall not divulge or permit to be divulged the names and the number of persons who have submitted their notice of intention to bid or submit a proposal until after the opening of bids[–] or proposals. All information contained in the answers to questionnaires shall remain confidential, and any government officer or employee who knowingly divulges or permits to be divulged any [such] of that confidential information to any person not fully entitled thereto shall be fined not more than $250. Questionnaires so submitted shall be returned to the [bidders] offerors after having served their purpose."

SECTION 5. Section 102-4, Hawaii Revised Statutes, is amended to read as follows:

"§102-4 Advertisement [for-bids]. [Public notice]

Advertisement of a call for bids or proposals shall be made either by:
(1) Newspaper publication for not less than three
different days statewide, with respect to any state
agency, or county-wide within the particular county
with respect to any county or county agency; or

(2) Online advertisement on the awarding government
agency's internet site; provided that the online
advertisement shall remain posted until the due date
for bids or proposals has passed."

SECTION 6. Section 102-5, Hawaii Revised Statutes, is
amended to read as follows:

"§102-5 [Bids] Bid opening; proposal opening; rejection.
(a) For a call for bids, the time of opening of [such]
the tenders shall be not less than [five] fifteen days after the
initial advertisement date. All bids shall
be sealed and delivered to the officer advertising therefor and
shall be opened by the officer at the hour and place to be
stated in the call for tenders in the presence of all [bidders]
offering who attend, and may be inspected by any [bidder]
offering.

(b) For a call for proposals, the deadline for proposals
shall be not less than thirty days after the initial
advertisement date. Proposals shall be opened by the officer so as to avoid disclosure of the contents to competing offerors and persons not involved in the evaluation process during the process of evaluation. A register of proposals shall be prepared by the officer and shall be open for public inspection after the contract is awarded.

(c) For a call for proposals, discussions may be conducted with all responsible offerors who submit proposals determined by the officer as qualified to be selected for a contract award. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submissions and prior to the award for the purpose of obtaining the best and final offer.

(d) All bids [which] or proposals that do not comply with the requirements of the call for tenders shall be rejected. The officer calling for bids or proposals may reject any or all bids or proposals and waive any defects when in the officer's opinion [such] the rejection or waiver will be for the best interest of the public."

SECTION 7. Section 102-6, Hawaii Revised Statutes, is amended to read as follows:
§102-6 Deposits of legal tender, etc., to accompany bid or proposal. (a) All bids or proposals shall be accompanied by a deposit of legal tender or by a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, in a sum not less than five per cent of the amount bid or proposal, payable at sight or unconditionally assigned to the officer advertising for tenders or proposals; provided that when the amount of the bid or proposal exceeds $50,000, the deposit shall be in a sum not less than $2,500 plus two per cent of the amount in excess of $50,000.

If the deposit is in the form of a surety bond, it shall be issued in accordance with subsection (b).

(b) A bid or proposal may be accompanied by a surety bond executed to the officer calling for bids or proposals by the bidder or offeror as principal and by any bonding company listed in the United States Treasury List; provided that the bond furnished by any surety listed shall not exceed the bonding
capacity rating of that surety on the Treasury List; in a sum of

equal amount, conditioned upon the [bidder] offeror entering

into the contract and furnishing satisfactory security within
ten days after the award or within any further time as the

officer may allow, if the [bidder] offeror is awarded the

contract."

SECTION 8. Section 102-7, Hawaii Revised Statutes, is

amended to read as follows:

"§102-7 Forfeiture of deposits, return thereof. If the

[bidder] offeror to whom the contract is awarded fails or

neglects to enter into the contract and furnish satisfactory

security, as required by sections 102-11 and 102-12, within ten
days after the award or within [such further] an additional

period of time as the officer awarding the contract may allow,

the officer shall pay the amount of the deposit into the

treasury as a realization of the State, county, or other
governmental agency, as the case may be. If the contract is

entered into and the security furnished within the required
time, the deposit, certificate, or check shall be returned to

the successful [bidder] offeror. The deposits made by the

unsuccessful [bidders] offerors shall be returned to them after
the contract is entered into or, if the contract is not awarded
or entered into, after the officer's determination to publish
another call for tenders."

SECTION 9. Section 102-8, Hawaii Revised Statutes, is
amended to read as follows:

"§102-8 Bond may be substituted for deposits. In lieu of
the deposits prescribed by section 102-6, a bid or proposal may
be accompanied by a surety bond executed to the officer calling
for bids or proposals by the [bidder] offeror as principal and
by any corporation organized for the purpose of becoming surety
on bonds, authorized under the laws of the United States or of
the State to act as surety and doing business in the State under
the laws of the United States or of the State, if a foreign
corporation, and under the laws of the State, if a Hawaii
corporation, as surety, in a penal sum of equal amount,
conditioned upon the [bidder] offeror entering into the contract
and furnishing satisfactory security within ten days after the
award or within any further time as the officer may allow, if
the [bidder] offeror is awarded the contract."

SECTION 10. Section 102-9, Hawaii Revised Statutes, is
amended to read as follows:
$102-9  [Contracts to be in writing; highest responsible bidder.] Awarding of contracts.  (a) All such contracts shall be in writing and shall be executed by the officer letting the contract in the name of the State, county, or the board, bureau, or commission thereof authorized to let contracts in its own name, as the case may be.

(b) For a call for bids, the award shall be made with the highest responsible bidder, offeror, if such bidder, and offeror qualifies by providing the security required by sections 102-11 and 102-12. If the highest and best bid or any other bid is rejected, or if the bidder offeror to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, the officer may, in the officer's discretion, award the contract to the next highest and best remaining responsible bidder offeror.

(c) For a call for proposals, the officer shall designate a review committee consisting of a minimum of three persons. In designating the members of the review committee, the officer shall ensure the impartiality and independence of committee members. The committee shall review and evaluate all proposals and other pertinent information and prepare a list of qualified
offerors. The committee shall rank a minimum of three offerors based on the review and evaluation of the proposals and other pertinent information and provide the ranking to the officer. The officer shall negotiate a contract with the first ranked offeror. If the parties are unable to agree on the terms of the final contract, the officer may decline to award the contract to the highest ranked offeror and negotiate directly with the next highest ranked offeror. The process may be repeated by the officer until an acceptable contract is negotiated. The contract file shall document the reasons for the awarding of the contract to the eventual awardee and the reasons for failure to award the contract to any higher ranked offeror.

(d) All persons involved in the review, evaluation, or awarding of contracts under this section shall adhere to all requirements of ethical public procurement under section 103D-101."

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

SECTION 12. This Act shall take effect on July 1, 2019.
Report Title:
Concessions; Public Property; Bids; Proposals

Description:
Allows proposals to be submitted for concessions on public property. Establishes criteria for acceptance and awarding of proposals for concessions on public property. Specifies advertising requirements for bids or proposals and allows for online advertising. Requires that concession contracts be awarded by a procurement officer based on the rankings of a committee of a minimum of 3 individuals designated by the procurement officer to review and evaluate proposals from offerors. Requires that all persons involved in the review, evaluation, or awarding of concession contracts adhere to all requirements of ethical public procurement under section 103D-101, Hawaii Revised Statutes.

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