

S.B. NO. 1213

JAN 24 2019

A BILL FOR AN ACT

RELATING TO PROCUREMENT FILING FEE.

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

1 SECTION 1. The legislature finds that procurement bid
2 challenges often result in project delays, funding lapses, and
3 project cost increases. These concerns have been partly
4 addressed by the requirement that the department of commerce and
5 consumer affairs' office of administrative hearings process and
6 hear these cases within twenty-one days and issue decisions
7 within forty-five days of the filing of the challenges.
8 However, these proceedings can involve complex issues, multiple
9 litigants, and days or weeks of hearing. To meet these strict
10 deadlines and issue written decisions that can withstand
11 appellate review, the department must assign these cases the
12 highest priority in terms of time and resources. Hearings for
13 other non-procurement cases must be delayed, and the hearings
14 officers must commit substantial time to completing the bid
15 challenge proceedings by the statutory deadlines.

16 The legislature further finds that even though the
17 department has been tasked with this critical responsibility, it
18 has received no appropriation of funds to defray the costs of

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1 these proceedings. As a result, these costs have been
2 indirectly paid for by the license registration fees assessed by
3 the department.

4 The purpose of this Act is to provide a funding mechanism
5 to partially cover the costs to conduct bid challenge hearings
6 by authorizing the department to assess a non-refundable filing
7 fee upon the party initiating the bid challenge for contracts
8 with an estimated value of \$500,000 or more.

9 SECTION 2. Section 103D-709, Hawaii Revised Statutes, is
10 amended by amending subsection (e) to read as follows:

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

14 (1) \$1,000 for a contract with an estimated value of less
15 than \$500,000;

16 (2) \$2,000 for a contract with an estimated value of
17 \$500,000 or more, but less than \$1,000,000; or

18 (3) One-half per cent of the estimated value of the
19 contract if the estimated value of the contract is
20 \$1,000,000 or more; provided that in no event shall
21 the required amount of the cash or protest bond be
22 more than \$10,000.

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Report Title:

Procurement; Filing Fee

Description:

Requires a party initiating a bid challenge to pay the Department of Commerce and Consumer Affairs a non-refundable filing fee for contracts with an estimated value of \$500,000 or more.

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

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO PROCUREMENT FILING FEE.

PURPOSE: The purpose of this bill is to require the party initiating a bid challenge involving a contract with an estimated value of \$500,000 or more to pay the Department of Commerce and Consumer Affairs (Department) a non-refundable filing fee to help defray the costs of addressing the bid challenge.

MEANS: Amend section 103D-709(e), Hawaii Revised Statutes.

JUSTIFICATION: Procurement bid challenges often result in project delays, funding lapses, and project cost increases. These concerns have been partly addressed by the requirement that the Department's Office of Administrative Hearings process and hear these cases within 21 days and issue decisions within 45 days of the filing of the challenges. However, these proceedings can involve complex issues, multiple litigants, and days or weeks of hearing. To meet these strict deadlines and issue written decisions that can withstand appellate review, the Department must assign these cases the highest priority in terms of time and resources. Hearings for other non-procurement cases must be delayed, and the hearings officers must commit substantial time to complete the bid challenge proceedings by the statutory deadlines. In previous cases, it has taken approximately 100 hours or more for the hearings officer to complete the hearing process and issue a decision.

Even though the Department has been tasked with this critical responsibility, it has received no appropriation of funds to defray the costs of these proceedings. As a result, these costs have been indirectly

paid for by the license registration fees assessed by the Department.

This bill will require a party initiating a bid challenge for larger contracts (contracts with an estimated value of at least \$500,000) to pay the Department a non-refundable filing fee to help defray the costs of the administrative review of bid challenges. Under this bill, a party initiating a bid challenge will be required to pay a \$200 non-refundable filing fee for contracts with an estimated value of \$500,000 or more, but less than \$1,000,000, and \$1,000 for a contract with an estimated value of \$1,000,000 or more. No filing fee will be assessed for contracts with an estimated value less than \$500,000. This fee will be deposited into the Compliance Resolution Fund and used exclusively to defray the costs of addressing bid challenges.

Impact on the public: This bill will require a party initiating a bid challenge for larger contracts (contracts with an estimated value of \$500,000 or more) to pay the Department a non-refundable filing fee to help defray the costs of conducting the administrative review of those challenges.

Impact on the department and other agencies: This bill will relieve the Department and its divisions from having to bear all of the costs and expenses of conducting bid challenge proceedings.

GENERAL FUNDS: None.

OTHER FUNDS: Compliance Resolution Fund.

PPBS PROGRAM DESIGNATION: CCA-191.

OTHER AFFECTED AGENCIES: State Procurement Office.

EFFECTIVE DATE: Upon approval.