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# 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 bid 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



1 has received no appropriation of funds to defray the costs of  
2 these proceedings. As a result, these costs have been  
3 indirectly paid for by the license registration fees assessed by  
4 the department.

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

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  
19 purchasing agency, or a designee of either officer under section  
20 103D-310, 103D-701, or 103D-702.



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

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



1 present argument on all issues involved. Fact finding under  
2 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  
21 \$500,000 or more, 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 in no event shall  
4 the required amount of the cash or protest bond be  
5 more than \$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 (f) In addition to the bond required in subsection (e),  
12 the initiating party shall pay to the department of commerce and  
13 consumer affairs a non-refundable filing fee of:

14 (1) \$200 for a contract with an estimated value of  
15 \$500,000 or more, but less than \$1,000,000; or

16 (2) \$1,000 for a contract with an estimated value of  
17 \$1,000,000 or more.

18 Failure to pay the filing fee shall result in the rejection or  
19 dismissal of the request for review. The fee shall be deposited  
20 into the compliance resolution fund established pursuant to



1 section 26-9(o) and used to help defray the costs of conducting  
2 the administrative proceeding for review.

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

5 (1) All pleadings, motions, and 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.

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

17 [~~h~~] (i) The hearings officer shall decide whether the  
18 determinations of the chief procurement officer or the chief  
19 procurement officer's designee were in accordance with the  
20 Constitution, statutes, rules, and the terms and conditions of



1 the solicitation or contract and shall order such relief as may  
2 be appropriate in accordance with this chapter.

3 ~~[(i)]~~ (j) The policy board shall adopt other rules as may  
4 be necessary to ensure that the proceedings conducted pursuant  
5 to this section afford all parties an opportunity to be heard.

6 ~~[(j)]~~ (k) As used in this section, "estimated value of the  
7 contract" or "estimated value", with respect to a contract,  
8 means the lowest responsible and responsive bid under section  
9 103D-302, or the bid amount of the responsible offeror whose  
10 proposal is determined in writing to be the most advantageous  
11 under section 103D-303, as applicable."

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

14 SECTION 4. This Act shall take effect on January 1, 2050.



**Report Title:**

DCCA; Procurement; Protests; Bid Challenge; 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. (SB1213 HD1)

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

