

JAN 22 2021

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# 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- Competitive sealed bidding to the second lowest  
5 bidder. (a) Contracts shall be awarded by competitive sealed  
6 bidding except as otherwise provided in section 103D-301.  
7 Awards of contracts by competitive sealed bidding may be made  
8 after single or multi-step bidding. Competitive sealed bidding  
9 does not include negotiations with bidders after the receipt and  
10 opening of bids. Award is based on the criteria set forth in  
11 the invitation for bids.

12 (b) An invitation for bids shall be issued, and shall  
13 include a purchase description and all contractual terms and  
14 conditions applicable to the procurement. If the invitation for  
15 bids is for construction, it shall specify that all bids include  
16 the name of each person or firm to be engaged by the bidder as a  
17 joint contractor or subcontractor in the performance of the



1 contract and the nature and scope of the work to be performed by  
2 each. Construction bids that do not comply with the  
3 requirements of this subsection may be accepted if acceptance is  
4 in the best interest of the State and the value of the work to  
5 be performed by the joint contractor or subcontractor is equal  
6 to or less than one per cent of the total bid amount.

7 (c) Adequate public notice of the invitation for bids  
8 shall be given a reasonable time before the date set forth in  
9 the invitation for the opening of bids. The policy board shall  
10 adopt rules which specify:

11 (1) The form that the notice is to take;  
12 (2) What constitutes a reasonable interim between  
13 publication and bid opening; and  
14 (3) How notice may be published, including publication in  
15 a newspaper of general circulation, notice by mail to  
16 all persons on any applicable bidders mailing list,  
17 publication by any public or private telecommunication  
18 information network, or any other method of  
19 publication it deems to be effective.

20 (d) Bids shall be opened publicly in the presence of one  
21 or more witnesses, at the time and place designated in the



1 invitation for bids. The amount of each bid and other relevant  
2 information specified by rule, together with the name of each  
3 bidder shall be recorded. The record and each bid shall be open  
4 to public inspection.

5 (e) Bids shall be unconditionally accepted without  
6 alteration or correction, except as authorized in this chapter  
7 or by rules adopted by the policy board.

8 (f) Bids shall be evaluated based on the requirements set  
9 forth in the invitation for bids. These requirements may  
10 include criteria to determine acceptability such as inspection,  
11 testing, quality, workmanship, delivery, and suitability for a  
12 particular purpose. Those criteria that will affect the bid  
13 price and be considered in evaluation for award shall be  
14 objectively measurable, such as discounts, transportation costs,  
15 and total or life cycle costs. The invitation for bids shall  
16 set forth the evaluation criteria to be used. No criteria may  
17 be used in bid evaluation that are not set forth in the  
18 invitation for bids.

19 (g) Correction or withdrawal of inadvertently erroneous  
20 bids before or after award, or cancellation of invitations for  
21 bids, awards, or contracts based on such bid mistakes, shall be



1 permitted in accordance with rules adopted by the policy board.  
2 After bid opening no changes in bid prices or other provisions  
3 of bids prejudicial to the interest of the public or to fair  
4 competition shall be permitted. Except as otherwise provided by  
5 rule, all decisions to permit the correction or withdrawal of  
6 bids, or to cancel awards or contracts based on bid mistakes,  
7 shall be supported by a written determination made by the chief  
8 procurement officer or head of a purchasing agency.

9       (h) The contract shall be awarded with reasonable  
10 promptness by written notice to the second lowest responsible  
11 and responsive bidder whose bid meets the requirements and  
12 criteria set forth in the invitation for bids. In the event all  
13 bids exceed available funds as certified by the appropriate  
14 fiscal officer, the head of the purchasing agency responsible  
15 for the procurement in question is authorized in situations  
16 where time or economic considerations preclude resolicitation of  
17 work of a reduced scope to negotiate an adjustment of the bid  
18 price, including changes in the bid requirements, with the  
19 second lowest responsible and responsive bidder, in order to  
20 bring the bid within the amount of available funds.



1        (i) When it is not practicable to initially prepare a  
2 purchase description to support an award based on price, an  
3 invitation for bids, which requests the submission of unpriced  
4 offers to be followed by an invitation for bids limited to those  
5 bidders whose offers have been qualified under the criteria set  
6 forth in the first solicitation, may be used. If a multi-step  
7 sealed bidding process is used, the notice and the invitation  
8 for bids shall describe each step to be used in soliciting,  
9 evaluating, and selecting unpriced offers."

10        SECTION 2. Section 103D-301, Hawaii Revised Statutes, is  
11 amended to read as follows:

12        **"§103D-301 Methods of source selection.** Unless otherwise  
13 authorized by law, all contracts shall be awarded pursuant to  
14 the following sections, as applicable:

- 15        (1) Section 103D-302 (Competitive sealed bids);
- 16        (2) Section 103D-303 (Competitive sealed proposals);
- 17        (3) Section 103D-304 (Professional services procurement);
- 18        (4) Section 103D-305 (Small purchases);
- 19        (5) Section 103D-306 (Sole source procurement); ~~and~~
- 20        (6) Section 103D-307 (Emergency procurements) ~~[-]~~; and



1        (7) Section 103D- (Competitive sealed bids to the  
2                    second lowest bidder."

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

5            SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

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# S.B. NO. 658

**Report Title:**

Procurement; Competitive Sealed Bidding; Second Low Bid Method

**Description:**

Allows purchasing agencies to use the second low bid method for procurement.

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

