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# A BILL FOR AN ACT

RELATING TO PUBLIC CONTRACTS.

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

1 SECTION 1. Section 103D-304, Hawaii Revised Statutes, is  
2 amended by amending subsection (i) to read as follows:

3 "(i) Contracts awarded under this section for \$5,000 or  
4 more shall be posted electronically within seven days of the  
5 contract award by the chief procurement officer or designee and  
6 shall remain posted for at least one year. Written notification  
7 to the non-selected persons ranked under subsection (g) shall be  
8 sent at least one day prior to the posting. Information to be  
9 posted shall include, but not be limited to:

- 10 (1) The names of the persons submitted under subsection  
11 (g) [+], including the ranking;
- 12 (2) The name of the person or organization receiving the  
13 award;
- 14 (3) The dollar amount of the contract;
- 15 (4) The name of the head of the purchasing agency or  
16 designee making the selection; and



1 (5) Any relationship of the principals to the official  
2 making the award."

3 SECTION 2. Section 103D-701, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 **"§103D-701 Authority to resolve protested solicitations**  
6 **and awards.** (a) Any actual or prospective bidder, offeror, or  
7 contractor who is aggrieved in connection with the solicitation  
8 or award of a contract may protest to the chief procurement  
9 officer or a designee as specified in the solicitation. Except  
10 as provided in sections 103D-303 and 103D-304, a protest shall  
11 be submitted in writing within five working days after the  
12 aggrieved person knows or should have known of the facts giving  
13 rise thereto; provided that a protest of an award or proposed  
14 award shall in any event be submitted in writing within five  
15 working days after the posting of award of the contract under  
16 section 103D-302 or 103D-303, if no request for debriefing has  
17 been made, as applicable; provided further that no protest based  
18 upon the content of the solicitation shall be considered unless  
19 it is submitted in writing prior to the date set for the receipt  
20 of offers.

21 (b) The purchasing agency shall notify in writing all  
22 offerors that submitted a proposal of their non-selection at



1 least one day prior to the posting of the award; provided that  
2 the posting of the award shall include, where applicable, but is  
3 not limited to:

4 (1) Offerors submitting a proposal;

5 (2) Numerical scores of the evaluation committee for the  
6 acceptability and potentially acceptable proposal, and  
7 if a best and final offer was requested, the names of  
8 the priority-listed offerors and their final numerical  
9 score;

10 (3) Name of the successful offeror and the dollar amount  
11 of the award; and

12 (4) Basis for making the award to the successful offeror;  
13 provided that trade secrets or other proprietary or confidential  
14 information shall not be disclosed in the posting of the award.

15 [~~b~~] (c) The chief procurement officer or a designee,  
16 prior to the commencement of an administrative proceeding under  
17 section 103D-709 or an action in court pursuant to section  
18 103D-710, may settle and resolve a protest concerning the  
19 solicitation or award of a contract. This authority shall be  
20 exercised in accordance with rules adopted by the policy board.

21 [~~e~~] (d) If the protest is not resolved by mutual  
22 agreement, the chief procurement officer or a designee shall



1 promptly issue a decision in writing to uphold or deny the  
2 protest. The decision shall:

- 3 (1) State the reasons for the action taken; and  
4 (2) Inform the protestor of the protestor's right to an  
5 administrative proceeding as provided in this part, if  
6 applicable.

7 ~~[(d)]~~ (e) A copy of the decision under subsection ~~[(e)]~~  
8 (d) shall be mailed or otherwise furnished immediately to the  
9 protestor and any other party intervening.

10 ~~[(e)]~~ (f) A decision under subsection ~~[(e)]~~ (d) shall be  
11 final and conclusive, unless any person adversely affected by  
12 the decision commences an administrative proceeding under  
13 section 103D-709.

14 ~~[(f) In the event]~~ (g) If of a timely protest under  
15 subsection (a), no further action shall be taken on the  
16 solicitation or the award of the contract until the chief  
17 procurement officer makes a written determination that the award  
18 of the contract without delay is necessary to protect  
19 substantial interests of the State.

20 ~~[(g)]~~ (h) In addition to any other relief, when a protest  
21 is sustained and the protestor should have been awarded the  
22 contract under the solicitation but is not, then the protestor



1 shall be entitled to the actual costs reasonably incurred in  
2 connection with the solicitation, including bid or proposal  
3 preparation costs but not attorney's fees."

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

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



**Report Title:**

Public Contracts; Bid Protest; Procurement Policy Board

**Description:**

Requires purchasing agencies, one day prior to the posting of public contract awards, to notify all offerors and affiliates of offerors of information regarding the award and basis for the award. (SD1)

