

JAN 25 2012

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 SECTION 1. Section 103D-303, Hawaii Revised Statutes, is
2 amended by amending subsection (f) to read as follows:

3 " (f) ~~[Discussions may be conducted with responsible~~
4 ~~offerors who submit proposals determined to be reasonably likely~~
5 ~~to be selected for a contract award for the purpose of~~
6 ~~clarification to assure full understanding of, and~~
7 ~~responsiveness to, the solicitation requirements.] For purposes~~
8 ~~of evaluation, when provided for in the request for proposals,~~
9 the contracting agency may:

10 (1) Make an award or awards based solely on the ranking of
11 proposals;

12 (2) Establish a priority list of offerors for the purpose
13 of conducting discussions or negotiations;

14 (3) Conduct discussions with offerors on a priority list
15 established pursuant to paragraph (2) to assure full
16 understanding and evaluation of the solicitation
17 requirements. Offerors shall be accorded fair and
18 equal treatment with respect to any opportunity for



1 discussion and revision of proposals, and revisions
2 may be permitted after submissions and prior to award
3 for the purpose of obtaining best and final offers.

4 In conducting discussions, there shall be no
5 disclosure of any information derived from proposals
6 submitted by competing [~~offerors.~~] offerors;

7 (4) Conduct serial negotiations with offerors on a
8 priority list established pursuant to paragraph (2),
9 beginning with the highest-ranked offeror; and

10 (5) Conduct competitive simultaneous negotiations with
11 offerors on a priority list established pursuant to
12 paragraph (2);

13 provided that in conducting serial or competitive simultaneous
14 negotiations, the contracting agency shall not disclose to an
15 offeror the substance of negotiations with or the proposal of
16 any competing offeror unless, before the disclosure, the
17 contracting agency notifies all offerors with whom the
18 contracting agency will engage in negotiations of the
19 contracting agency's intent to disclose such information."

20 SECTION 2. Section 103D-305, Hawaii Revised Statutes, is
21 amended to read as follows:



1 **"§103D-305 Small purchases; prohibition against parceling.**

2 (a) Procurements of less than \$100,000 for goods or services,
3 or \$250,000 for construction shall be made in accordance with
4 procedures set forth in rules adopted by the policy board that
5 are designed to ensure administrative simplicity and as much
6 competition as is practicable; provided that multiple
7 expenditures shall not be created at the inception of a
8 transaction or project so as to evade the requirements of this
9 chapter; and provided further that procurement requirements
10 shall not be artificially divided or parceled so as to
11 constitute a small purchase under this section.

12 (b) Procurements of greater than \$50,000 for construction
13 under subsection (a) shall require security by a performance
14 bond delivered to the purchasing agency that is:

- 15 (1) In a form prescribed by the rules of the policy board;
- 16 (2) Executed by a surety company authorized to do business
17 in this State; and
- 18 (3) In an amount equal to one hundred per cent of the
19 price specified in the contract,

20 or shall otherwise be secured by a performance bond in a manner
21 satisfactory to the purchasing agency.



1 (c) Procurements of \$25,000 to less than \$100,000 shall be
2 made in accordance with small purchase procedures; provided that
3 small purchase procurements through an electronic system shall
4 be required after the policy board has adopted rules for
5 electronic procurement and provided training to the affected
6 agency.

7 (d) Procurements of goods or services not exceeding \$5,000
8 may be awarded in any manner deemed practical or convenient by
9 the contracting agency, including by direct selection or award;
10 provided that this subsection shall not apply to:

11 (1) Procurements for construction, which shall be subject
12 to rules adopted by the policy board; and

13 (2) Procurements for goods or services included on
14 mandatory state procurement office price or vendor
15 lists, price schedules, or other lists and schedules,
16 if use of the list or schedule is required by the
17 chief procurement officer."

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

20 **"§103D-701 Authority to resolve protested solicitations**
21 **and awards.** (a) Any actual or prospective bidder, offeror, or
22 contractor who is aggrieved in connection with the solicitation



1 or award of a contract may protest to the chief procurement
2 officer or a designee as specified in the solicitation[-],
3 except as provided in subsection (b); provided that the protest
4 shall be submitted in writing to the board established pursuant
5 to subsection (b) within five working days after the aggrieved
6 person knows or should have known of the facts giving rise
7 thereto, or in any event within five working days after the
8 posting of award of the contract under section 103D-302 or
9 103D-303; provided further that the party initiating the protest
10 by submitting the protest to the board shall pay to the
11 department of commerce and consumer affairs a cash or protest
12 bond equivalent to fifteen per cent of the estimated value of
13 the contract.

14 If the initiating party prevails in the procurement
15 protest, the cash or protest bond shall be returned to that
16 party. If the initiating party does not prevail in the
17 procurement protest, the cash or protest bond shall be deposited
18 in the general fund.

19 (b) There is established within the state procurement
20 office a procurement protest board for the purposes of
21 determining whether or not a protest is frivolous. The board
22 shall be composed of eleven members appointed by the governor as



1 provided in section 26-34. The members of the board shall serve
2 without compensation but shall be reimbursed for expenses,
3 including travel expenses, necessary for the performance of
4 their duties. The members shall choose a chair from among them,
5 and the chair shall designate three members of the board to
6 preside over each protest submitted to the board. The board,
7 through the panel composed of three members, shall determine in
8 writing within five working days after a protest is submitted to
9 the board whether or not the protest is frivolous. If the board
10 determines that a protest is frivolous, the aggrieved person
11 shall not be entitled to protest to the chief procurement
12 officer or a designee.

13 (c) Except as provided in sections 103D-303 and 103D-304,
14 a protest shall be submitted in writing within five working days
15 after [the aggrieved person knows or should have known of the
16 facts giving rise thereto; provided that a protest of an award
17 or proposed award shall in any event be submitted in writing
18 within five working days after the posting of award of the
19 contract under section 103D-302 or 103D-303, if no request for
20 debriefing has been made, as applicable; provided further that
21 no protest based upon the content of the solicitation shall be
22 considered unless it is submitted in writing prior to the date



1 ~~set for the receipt of offers.]~~ a determination by the
2 procurement protest board that the protest is not frivolous.

3 ~~[(b)]~~ (d) The chief procurement officer or a designee,
4 prior to the commencement of an administrative proceeding under
5 section 103D-709 or an action in court pursuant to section
6 103D-710, may settle and resolve a protest concerning the
7 solicitation or award of a contract. This authority shall be
8 exercised in accordance with rules adopted by the policy board.

9 ~~[(e)]~~ (e) If the protest is not resolved by mutual
10 agreement, the chief procurement officer or a designee shall
11 promptly issue a decision in writing to uphold or deny the
12 protest. The decision shall:

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

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

20 ~~[(e)]~~ (g) A decision under subsection ~~[(e)]~~ (e) shall be
21 final and conclusive, unless any person adversely affected by



1 the decision commences an administrative proceeding under
2 section 103D-709.

3 ~~[(f)]~~ (h) In the event of a timely protest under
4 subsection ~~[(a)]~~ (c), no further action shall be taken on the
5 solicitation or the award of the contract until the chief
6 procurement officer makes a written determination that the award
7 of the contract without delay is necessary to protect
8 substantial interests of the State.

9 ~~[(g)]~~ (i) In addition to any other relief, when a protest
10 is sustained and the protestor should have been awarded the
11 contract under the solicitation but is not, then the protestor
12 shall be entitled to the actual costs reasonably incurred in
13 connection with the solicitation, including bid or proposal
14 preparation costs but not attorney's fees.

15 (j) As used in this section, "estimated value of the
16 contract" means the lowest responsible and responsive bid under
17 section 103D-302, or the bid amount of the responsible offeror
18 whose proposal is determined in writing to be the most
19 advantageous under section 103D-303, as applicable."

20 SECTION 4. No later than twenty days prior to the
21 convening of each regular session of the legislature, the
22 administrator of the state procurement office, in consultation



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1 with the director of commerce and consumer affairs, shall report
2 to the comptroller all protests filed pursuant to chapter 103D,
3 part VII, Hawaii Revised Statutes, during the preceding calendar
4 year, including the disposition of the protests and the lapsing
5 of any funds appropriated by the legislature for a program
6 expenditure as a result of a protest.

7 SECTION 5. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

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

10

INTRODUCED BY:



S.B. NO. 2928

Report Title:

Procurement; Competitive Sealed Proposals; Small Purchases; Remedies

Description:

Authorizes a contracting agency procuring goods, services, or construction using competitive sealed proposals to award a contract based solely on the ranking of offerors, to establish a priority list for the purpose of conducting discussions and negotiations, and to conduct discussions or negotiations. Authorizes a contracting agency to procure goods or services not exceeding \$5,000 in any manner deemed practical by the contracting agency, with certain exceptions. Creates a board within the state procurement office to determine whether a procurement protest is frivolous. If a protest is found frivolous by the board, prohibits the aggrieved person from submitting the protest to the chief procurement officer or designee. Requires an aggrieved party to pay DCCA a cash or protest bond equivalent to 15% of the estimated value of the contract to submit a protest. Requires the administrator of the state procurement office, in consultation with the director of commerce and consumer affairs, to annually report to the comptroller all procurement protests filed in the preceding calendar year.

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

