
A BILL FOR AN ACT

RELATING TO CONCESSIONS ON PUBLIC PROPERTY.

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

1 SECTION 1. The legislature finds that concessions on
2 public property generally provide two main benefits. First,
3 they satisfy the general public's demand for goods, wares,
4 merchandise, or services at the properties where the concession
5 is located. Second, they provide revenue to support the
6 properties' operations.

7 Currently, the State's concession law provides that a
8 government agency shall base its award of a concession mainly on
9 the highest responsible bid. However, the "best value" process,
10 also known as competitive sealed bid proposals, allows
11 consideration of each offeror's potential benefit to the general
12 public, such as enhancement of customers' experiences and not
13 just the highest concession bid submitted to the government.

14 The purpose of this Act is to amend the requirements for
15 the awarding of concession contracts on public property.



1 SECTION 2. Section 102-1, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:

4 "Offeror" means a person submitting a bid or proposal, as
5 the case may be, for a concession."

6 SECTION 3. Section 102-2, Hawaii Revised Statutes, is
7 amended by amending its title and subsection (a) as follows:

8 **"§102-2 Contracts for concessions; bid or proposal**
9 **required, exception.** (a) Except as otherwise specifically
10 provided by law, no concession or concession space shall be
11 leased, let, licensed, rented out, or otherwise disposed of
12 either by contract, lease, license, permit or any other
13 arrangement, except under contract let after public notice for
14 sealed bids or proposals in the manner provided by law; provided
15 that the duration of the grant of the concession or concession
16 space shall be related to the investment required but in no
17 event to exceed fifteen years for the initial term, and if
18 amended, any then remaining term plus any agreed extension
19 thereof awarded or granted by the government agency making a
20 lease or contract or other arrangement relating to a concession;
21 provided further that and subject to approval by county council



1 resolution, the fifteen-year limit shall not apply to nonprofit
2 corporations organized pursuant to chapter 414D."

3 SECTION 4. Section 102-3, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~§102-3 [Qualification of bidders.]~~ Qualifications.

6 Before any prospective [~~bidder~~] offeror is entitled to submit
7 any bid or proposal for the occupancy of any such space, the
8 prospective [~~bidder~~] offeror shall, not less than six calendar
9 days prior to the day designated for opening bids[~~7~~] or
10 proposals, give written notice to the officer charged with
11 letting the contract of the prospective [~~bidder's~~] offeror's
12 intention to bid[~~7~~] or submit a proposal, and the officer shall
13 satisfy oneself of the prospective [~~bidder's~~] offeror's
14 financial ability, experience, and competence to carry out the
15 terms and conditions of any contract that may be awarded. For
16 this purpose, the officer may, in the officer's discretion,
17 require prospective [~~bidders~~] offerors to submit answers, under
18 oath, to questions contained in a form of questionnaire setting
19 forth a complete statement of the experience, competence, and
20 financial standing of the prospective [~~bidders.~~] offerors.
21 Whenever it appears to the officer, from answers to the



1 questionnaire or otherwise, that any prospective [~~bidder~~]
2 offeror is not fully qualified and able to carry out the terms
3 and conditions of the contract that may be awarded, the officer
4 shall, after affording the prospective [~~bidder~~] offeror an
5 opportunity to be heard and if still of the opinion that the
6 [~~bidder~~] offeror is not fully qualified to carry out the terms
7 and conditions of the contract that may be awarded, refuse to
8 receive or consider any bid or proposal offered by the
9 prospective [~~bidder~~] offeror. The officer charged with letting
10 the contract shall not divulge or permit to be divulged the
11 names and the number of persons who have submitted their notice
12 of intention to bid or submit a proposal until after the opening
13 of bids[~~-~~] or proposals. All information contained in the
14 answers to questionnaires shall remain confidential, and any
15 government officer or employee who knowingly divulges or permits
16 to be divulged any such information to any person not fully
17 entitled thereto shall be fined not more than \$250.
18 Questionnaires so submitted shall be returned to the [~~bidders~~]
19 offerors after having served their purpose."

20 SECTION 5. Section 102-4, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§102-4 Advertisement [for bids]. [Public notice]
2 Advertisement of a call for bids or proposals shall be made
3 either by:

4 (1) Newspaper publication for not less than three
5 different days statewide, with respect to any state
6 agency, or county-wide within the particular county
7 with respect to any county or county agency[-]; or
8 (2) Online advertisement on the awarding government
9 agency's internet site; provided that the online
10 advertisement shall remain posted until the due date
11 for bids or proposals has passed."

12 SECTION 6. Section 102-5, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§102-5 [Bids,] Bid opening; proposal opening; rejection.
15 [The] (a) For a call for bids, the time of opening of such
16 tenders shall be not less than [five] fifteen days after the
17 [~~last publication.~~] initial advertisement date. All bids shall
18 be sealed and delivered to the officer advertising therefor and
19 shall be opened by the officer at the hour and place to be
20 stated in the call for tenders in the presence of all [bidders]



1 offerors who attend, and may be inspected by any [~~bidder.~~]
2 offeror.

3 **(b)** For a call for proposals, the deadline for proposals
4 shall be not less than thirty days after the initial
5 advertisement date. Proposals shall be opened by the officer so
6 as to avoid disclosure of its contents to competing offerors and
7 persons not involved in the evaluation process during the
8 process of evaluation. A register of proposals shall be
9 prepared by the officer and shall be open for public inspection
10 after the contract is awarded.

11 **(c)** For a call for proposals, discussions may be conducted
12 with all responsible offerors who submit proposals determined by
13 the officer as qualified to be selected for a contract award.
14 Offerors shall be accorded fair and equal treatment with respect
15 to any opportunity for discussion and revision of proposals.
16 Revisions may be permitted after submissions and prior to the
17 award for the purpose of obtaining the best and final offer.

18 **(d)** All bids or proposals which do not comply with the
19 requirements of the call for tenders shall be rejected. The
20 officer calling for bids or proposals may reject any or all bids
21 or proposals and waive any defects when in the officer's opinion



1 such rejection or waiver will be for the best interest of the
2 public."

3 SECTION 7. Section 102-6, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§102-6 Deposits of legal tender, etc., to accompany
6 bid[-] or proposal. (a) All bids or proposals shall be
7 accompanied by a deposit of legal tender or by a certificate of
8 deposit, share certificate, cashier's check, treasurer's check,
9 teller's check, or official check drawn by, or a certified check
10 accepted by, a bank, savings institution, or credit union
11 insured by the Federal Deposit Insurance Corporation or the
12 National Credit Union Administration, in a sum not less than
13 five per cent of the amount bid[+] or proposal, payable at sight
14 or unconditionally assigned to the officer advertising for
15 tenders[+] or proposals; provided that when the amount of the
16 bid or proposal exceeds \$50,000, the deposit shall be in a sum
17 not less than \$2,500 plus two per cent of the amount in excess
18 of \$50,000.

19 If the [~~bid~~] deposit is in the form of a surety bond, it
20 shall be issued in accordance with subsection (b).



1 (b) A bid or proposal may be accompanied by a surety bond
2 executed to the officer calling for bids or proposals by the
3 [~~bidder~~] offeror as principal and by any bonding company listed
4 in the United States Treasury List; provided that the bond
5 furnished by any surety listed shall not exceed the bonding
6 capacity rating of that surety on the Treasury List; in a sum of
7 equal amount, conditioned upon the [~~bidder~~] offeror entering
8 into the contract and furnishing satisfactory security within
9 ten days after the award or within any further time as the
10 officer may allow, if the [~~bidder~~] offeror is awarded the
11 contract."

12 SECTION 8. Section 102-7, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§102-7 Forfeiture of deposits, return thereof.** If the
15 [~~bidder~~] offeror to whom the contract is awarded fails or
16 neglects to enter into the contract and furnish satisfactory
17 security, as required by sections 102-11 and 102-12, within ten
18 days after the award or within such further time as the officer
19 awarding the contract may allow, the officer shall pay the
20 amount of the deposit into the treasury as a realization of the
21 State, county or other governmental agency, as the case may be.



1 If the contract is entered into and the security furnished
2 within the required time, the deposit, certificate, or check
3 shall be returned to the successful [~~bidder~~] offeror. The
4 deposits made by the unsuccessful [~~bidders~~] offerors shall be
5 returned to them after the contract is entered into or, if the
6 contract is not awarded or entered into, after the officer's
7 determination to publish another call for tenders."

8 SECTION 9. Section 102-8, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§102-8 Bond may be substituted for deposits. In lieu of
11 the deposits prescribed by section 102-6, a bid or proposal may
12 be accompanied by a surety bond executed to the officer calling
13 for bids or proposals by the [~~bidder~~] offeror as principal and
14 by any corporation organized for the purpose of becoming surety
15 on bonds, authorized under the laws of the United States or of
16 the State to act as surety and doing business in the State under
17 the laws of the United States or of the State, if a foreign
18 corporation, and under the laws of the State, if a Hawaii
19 corporation, as surety, in a penal sum of equal amount,
20 conditioned upon the [~~bidder~~] offeror entering into the contract
21 and furnishing satisfactory security within ten days after the



1 award or within any further time as the officer may allow, if
2 the ~~[bidder]~~ offeror is awarded the contract."

3 SECTION 10. Section 102-9, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~§102-9 [Contracts to be in writing, highest responsible~~
6 ~~bidder.]~~ Awarding of contracts. (a) All such contracts shall
7 be in writing~~[7]~~ and shall be executed by the officer letting
8 the contract in the name of the State, county, or the board,
9 bureau, or commission thereof authorized to let contracts in its
10 own name, as the case may be~~[, and]~~.

11 (b) For a call for bids, award shall be made with the
12 highest responsible ~~[bidder,]~~ offeror, if such ~~[bidder]~~ offeror
13 qualifies by providing the security required by sections 102-11
14 and 102-12. If the highest and best bid or any other bid is
15 rejected, or if the bidder to whom the contract was awarded
16 fails to enter into the contract and furnish satisfactory
17 security, the officer may, in the officer's discretion, award
18 the contract to the next highest and best remaining responsible
19 ~~[bidder.]~~ offeror.

20 (c) For a call for proposals, the officer shall designate
21 a review committee consisting of a minimum of three persons. In



1 designating the members of the review committee, the officer
2 shall ensure the impartiality and independence of committee
3 members. The committee shall review and evaluate all proposals
4 and other pertinent information and prepare a list of qualified
5 offerors. The committee shall rank a minimum of three offerors
6 based on the review and evaluation of the proposals and other
7 pertinent information and send the ranking to the officer. The
8 officer shall negotiate a contract with the first ranked
9 offeror. If the parties are unable to come to an agreement on
10 the terms of the final contract, the officer may decline to
11 award the contract to the highest ranked offeror and negotiate
12 directly with the next highest ranked offeror. The process may
13 be repeated by the officer until an acceptable contract is
14 negotiated. The contract file shall document the reasons for
15 the awarding of the contract to the eventual awardee and the
16 reasons for failure to award the contract to any higher ranked
17 offeror.

18 (d) All persons involved in the review, evaluation, or
19 awarding of contracts under this section shall adhere to all
20 requirements of ethical public procurement under section
21 103D-101."



1 SECTION 11. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 12. This Act shall take effect on July 1, 2030.



Report Title:

Concessions; Public Property; Bids; Proposals

Description:

Allows proposals to be submitted for concessions on public property. Establishes criteria for acceptance and awarding of proposals for concessions on public property. Specifies advertising requirements for bids or proposals and allows for online advertising. Requires that concession contracts be awarded by a procurement officer based on the rankings of a committee of a minimum of three individuals designated by the procurement officer to review and evaluate proposals from offerors. Requires that all persons involved in the review, evaluation, or awarding of concession contracts adhere to all requirements of ethical public procurement under section 103D-101, Hawaii Revised Statutes. Takes effect on 7/1/2030.
(SD1)

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