

JAN 19 2018

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# 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.



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

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

SECTION 3. Section 102-2, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsection (a) to read:

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



1 ~~provided further that and subject to approval by county council~~  
2 ~~resolution, the fifteen year limit shall not apply to nonprofit~~  
3 ~~corporations organized pursuant to chapter 414D-]; provided~~  
4 further that any proposed duration of the grant of a concession  
5 or concession space in excess of thirty years shall be subject  
6 to approval by the head of the government agency awarding the  
7 contract."

8 2. By amending subsection (d) to read:

9 "(d) The bidding requirements and [~~fifteen year~~] limit on  
10 duration in subsection (a) shall not apply to any disposition or  
11 grant of rights to anyone to place one or more names, in  
12 accordance with applicable county sign ordinances, on a state or  
13 county building."

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

16 "§102-3 [~~Qualification of bidders.~~] Qualifications.

17 Before any prospective [~~bidder~~] offeror is entitled to submit  
18 any bid or proposal for the occupancy of any such space, the  
19 prospective [~~bidder~~] offeror shall, not less than six calendar  
20 days prior to the day designated for opening bids[~~7~~] or  
21 proposals, give written notice to the officer charged with



1 letting the contract of the prospective [~~bidder's~~] offeror's  
2 intention to bid[7] or submit a proposal, and the officer shall  
3 satisfy oneself of the prospective [~~bidder's~~] offeror's  
4 financial ability, experience, and competence to carry out the  
5 terms and conditions of any contract that may be awarded. For  
6 this purpose, the officer may, in the officer's discretion,  
7 require prospective [~~bidders~~] offerors to submit answers, under  
8 oath, to questions contained in a form of questionnaire setting  
9 forth a complete statement of the experience, competence, and  
10 financial standing of the prospective [~~bidders~~] offerors.  
11 Whenever it appears to the officer, from answers to the  
12 questionnaire or otherwise, that any prospective [~~bidder~~]  
13 offeror is not fully qualified and able to carry out the terms  
14 and conditions of the contract that may be awarded, the officer  
15 shall, after affording the prospective [~~bidder~~] offeror an  
16 opportunity to be heard and if still of the opinion that the  
17 [~~bidder~~] offeror is not fully qualified to carry out the terms  
18 and conditions of the contract that may be awarded, refuse to  
19 receive or consider any bid or proposal offered by the  
20 prospective [~~bidder~~] offeror. The officer charged with letting  
21 the contract shall not divulge or permit to be divulged the



1 names and the number of persons who have submitted their notice  
2 of intention to bid or submit a proposal until after the opening  
3 of bids or proposals. All information contained in the answers  
4 to questionnaires shall remain confidential, and any government  
5 officer or employee who knowingly divulges or permits to be  
6 divulged any such information to any person not fully entitled  
7 thereto shall be fined not more than \$250. Questionnaires so  
8 submitted shall be returned to the [~~bidders~~] offerors after  
9 having served their purpose."

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

12 "**§102-4 Advertisement** [~~for bids~~]. [~~Public notice~~]  
13 Advertisement of a call for bids shall be made either by:

- 14 (1) Newspaper publication for not less than three  
15 different days statewide, with respect to any state  
16 agency, or county-wide within the particular county  
17 with respect to any county or county agency[-]; or  
18 (2) Online advertisement on the awarding government  
19 agency's internet site; provided that the online  
20 advertisement shall remain posted until the due date  
21 for bids or proposals has passed."



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

"§102-5 ~~[Bids,]~~ Bid opening; proposal opening; rejection.

~~[The]~~ (a) For a call for bids, the time of opening of such tenders shall be not less than [five] fifteen days after the [last publication.] initial advertisement date. All bids shall be sealed and delivered to the officer advertising therefor and shall be opened by the officer at the hour and place to be stated in the call for tenders in the presence of all bidders who attend, and may be inspected by any bidder.

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

(c) For a call for proposals, discussions may be conducted with all responsible offerors who submit proposals determined by the officer as qualified to be selected for a contract award.



1 Offerors shall be accorded fair and equal treatment with respect  
2 to any opportunity for discussion and revision of proposals.  
3 Revisions may be permitted after submissions and prior to the  
4 award for the purpose of obtaining the best and final offer.

5 (d) All bids or proposals which do not comply with the  
6 requirements of the call for tenders shall be rejected. The  
7 officer calling for bids or proposals may reject any or all bids  
8 or proposals and waive any defects when in the officer's opinion  
9 such rejection or waiver will be for the best interest of the  
10 public."

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

13 "§102-6 Deposits of legal tender, etc., to accompany  
14 bid[-] or proposal. (a) All bids or proposals shall be  
15 accompanied by a deposit of legal tender or by a certificate of  
16 deposit, share certificate, cashier's check, treasurer's check,  
17 teller's check, or official check drawn by, or a certified check  
18 accepted by, a bank, savings institution, or credit union  
19 insured by the Federal Deposit Insurance Corporation or the  
20 National Credit Union Administration, in a sum not less than  
21 five per cent of the amount bid, payable at sight or



1 unconditionally assigned to the officer advertising for  
2 tenders[+] or proposals; provided that when the amount of the  
3 bid or proposal exceeds \$50,000, the deposit shall be in a sum  
4 not less than \$2,500 plus two per cent of the amount in excess  
5 of \$50,000.

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

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

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





1       "**§102-7 Forfeiture of deposits, return thereof.** If the  
2   ~~[bidder]~~ offeror to whom the contract is awarded fails or  
3   neglects to enter into the contract and furnish satisfactory  
4   security, as required by sections 102-11 and 102-12, within ten  
5   days after the award or within such further time as the officer  
6   awarding the contract may allow, the officer shall pay the  
7   amount of the deposit into the treasury as a realization of the  
8   State, county or other governmental agency, as the case may be.  
9   If the contract is entered into and the security furnished  
10   within the required time, the deposit, certificate, or check  
11   shall be returned to the successful ~~[bidder]~~ offeror. The  
12   deposits made by the unsuccessful ~~[bidders]~~ offerors shall be  
13   returned to them after the contract is entered into or, if the  
14   contract is not awarded or entered into, after the officer's  
15   determination to publish another call for tenders."

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

18       "**§102-8 Bond may be substituted for deposits.** In lieu of  
19   the deposits prescribed by section 102-6, a bid or proposal may  
20   be accompanied by a surety bond executed to the officer calling  
21   for bids or proposals by the ~~[bidder]~~ offeror as principal and



1 by any corporation organized for the purpose of becoming surety  
2 on bonds, authorized under the laws of the United States or of  
3 the State to act as surety and doing business in the State under  
4 the laws of the United States or of the State, if a foreign  
5 corporation, and under the laws of the State, if a Hawaii  
6 corporation, as surety, in a penal sum of equal amount,  
7 conditioned upon the [~~bidder~~] offeror entering into the contract  
8 and furnishing satisfactory security within ten days after the  
9 award or within any further time as the officer may allow, if  
10 the [~~bidder~~] offeror is awarded the contract."

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

13 "§102-9 [~~Contracts to be in writing; highest responsible~~  
14 ~~bidder.~~] Awarding of contracts. (a) All such contracts shall  
15 be in writing[~~7~~] and shall be executed by the officer letting  
16 the contract in the name of the State, county, or the board,  
17 bureau, or commission thereof authorized to let contracts in its  
18 own name, as the case may be[~~7~~, ~~and~~].

19 (b) For a call for bids, award shall be made with the  
20 highest responsible bidder, if such bidder qualifies by  
21 providing the security required by sections 102-11 and 102-12.



1 If the highest and best bid or any other bid is rejected, or if  
2 the bidder to whom the contract was awarded fails to enter into  
3 the contract and furnish satisfactory security, the officer may,  
4 in the officer's discretion, award the contract to the next  
5 highest and best remaining responsible bidder.

6 (c) For a call for proposals, award shall be made to the  
7 responsible offeror whose proposal is determined by the officer  
8 to be the most advantageous to the State, county, or other  
9 governmental agency taking into consideration the concession fee  
10 and the evaluation factors set forth in the call for proposals  
11 and the reasons for the officer's determination shall be in  
12 writing. In making a determination, the officer may, in the  
13 officer's sole discretion, elect to negotiate the terms of the  
14 final contract with the highest ranked offeror. If the parties  
15 are unable to come to an agreement on the terms of the final  
16 contract, the officer may decline to award the contract to the  
17 highest ranked offeror and negotiate directly with the next  
18 highest ranked offeror. The process may be repeated by the  
19 officer until an acceptable contract is negotiated. The  
20 contract file shall document the reasons for the awarding of the  
21 contract to the eventual awardee and the reasons for failure to

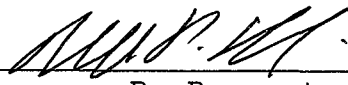


1 award the contract to any higher ranked offeror. No other  
2 factors or criteria shall be used in the evaluation."

3 SECTION 11. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 12. This Act shall take effect on July 1, 2018.

6

INTRODUCED BY:   
By Request



# S.B. NO. 2147

**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. Repeals the fifteen-year limit on the granting of concession space and the exemption from the fifteen-year limit for non-profits. Allows for the granting of concession space for over thirty years if approved by the head of the agency awarding the concession contract.

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