
A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 SECTION 1. The legislature finds that the process for
2 protesting a procurement solicitation, award, or proposed award
3 is confusing and raises questions regarding the fairness of the
4 process. Consequently, agencies have taken inconsistent
5 positions with respect to when a bidder is aggrieved.

6 The purpose of this Act is to clearly define when a protest
7 is required to be submitted. If a protest is based on the
8 contents of the solicitation, a protest is required at least one
9 day prior to the date set for the receipt of offers. In all
10 other cases, a protest is due within seven calendar days after
11 official action is taken, such as when an award is made. It is
12 not the legislature's intent to dissuade bidders from raising
13 objections with other bids prior to award. It is the
14 legislature's intent to encourage the agency to engage with
15 bidders throughout the entire procurement process.



1 SECTION 2. Section 103D-104, Hawaii Revised Statutes, is
2 amended by adding three new definitions to be appropriately
3 inserted and to read as follows:

4 "Bidder" means any individual, partnership, firm,
5 corporation, joint venture, or other legal entity submitting,
6 directly or through a duly authorized representative or agent, a
7 bid for the good, service, or construction contemplated.

8 "Offeror" means any individual, partnership, firm,
9 corporation, joint venture, or other legal entity submitting,
10 directly or through a duly authorized representative or agent,
11 an offer for the good, service, or construction contemplated.

12 "Protestor" means any actual or prospective bidder,
13 offeror, or contractor who is aggrieved in connection with the
14 solicitation or the award of a contract and files a protest."

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

17 **"§103D-701 Authority to resolve protested solicitations**
18 **and awards.** (a) Any actual or prospective bidder, offeror, or
19 contractor who is aggrieved in connection with the solicitation
20 or award of a contract may protest to the chief procurement
21 officer or a designee as specified in the solicitation. Except



1 as provided in sections 103D-303 and 103D-304, a protest shall
2 be submitted in writing within [~~five working days after the~~
3 ~~aggrieved person knows or should have known of the facts giving~~
4 ~~rise thereto; provided that a protest of an award or proposed~~
5 ~~award shall in any event be submitted in writing within five~~
6 ~~working days]~~ seven calendar days after the posting of award of
7 the contract under section 103D-302 or 103D-303, if no request
8 for debriefing has been made, as applicable; provided [~~further~~]
9 that no protest based upon the content of the solicitation shall
10 be considered unless it is submitted in writing [~~prior to~~] a
11 minimum of one business day before the date set for the receipt
12 of offers.

13 (b) The chief procurement officer or a designee, prior to
14 the commencement of an administrative proceeding under section
15 103D-709 or an action in court pursuant to section 103D-710,
16 shall use their best efforts to resolve concerns raised by the
17 protesting party through open and frank discussion and may
18 settle and resolve a protest concerning the solicitation or
19 award of a contract. This authority shall be exercised in
20 accordance with rules adopted by the policy board.



1 (c) The chief procurement officer or a designee shall
2 resolve any protest as expeditiously as possible. If the
3 protest is not resolved by mutual agreement, the chief
4 procurement officer or a designee shall issue a written decision
5 to uphold or deny the protest. The decision shall:

6 (1) State the reasons for the action taken; and

7 (2) Inform the protestor of the protestor's right to an
8 administrative proceeding as provided in this part, if
9 applicable.

10 If the protest of a construction contract or airport contract
11 that is awarded pursuant to section 103D-302 or 103D-303 is not
12 resolved by mutual agreement, the chief procurement officer or a
13 designee shall issue a written decision to uphold or deny the
14 protest within seventy-five calendar days of receipt of the
15 protest; provided that the chief procurement officer or a
16 designee may grant an extension based on written justification
17 of the extenuating circumstances; provided further that the
18 extension shall not exceed forty-five calendar days.

19 (d) A copy of the decision under subsection (c) shall be
20 mailed or otherwise furnished immediately to the protestor and
21 any other party intervening.



1 (e) A decision under subsection (c) shall be final and
2 conclusive, unless any person adversely affected by the decision
3 commences an administrative proceeding under section 103D-709.

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

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

16 (h) For the purposes of this section, a party is not
17 aggrieved until official action, adverse to the party, has been
18 taken."

19 SECTION 4. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on January 1, 2112.



Report Title:

Hawaii Public Procurement Code; Administrative Proceedings for Review; Protest

Description:

Requires a protest based on the content of the solicitation to be submitted a minimum of one day business before the date set for the receipt of offers, and all other protests be submitted within seven calendar days after the posting of award of the contract. Establishes that a party is not aggrieved until official action, adverse to that party, has been taken. Takes effect 1/1/2112. (SD1)

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

