

ACT 224

S.B. NO. 1329

A Bill for an Act Relating to Procurement.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that under the State's procurement code, an aggrieved party that submitted a bid for a state project that was not awarded the bid may protest the bid award. The legislature further finds that the procurement protest review process can be lengthy, causing project delays, thereby increasing project costs that are borne by taxpayers. Thus, it is imperative that the review process for protests is completed in a timely manner to reduce the cost of state projects. Establishing a deadline for bid protests to be reviewed and resolved would expedite the protest review process and reduce costly delays on major construction contracts and airport contracts.

The purpose of this Act is to:

- (1) Require the chief procurement officer or designee to address protests as expeditiously as possible;
- (2) Establish time limits to resolve the protests of construction contracts and airport contracts that are awarded pursuant to section 103D-302 or 103D 303,¹ Hawaii Revised Statutes, and that are not resolved by mutual agreement; and
- (3) Amend the cash or protest bond amount for a party initiating an administrative proceeding for review of a decision on the solicitation or award of a competitive sealed bidding or competitive sealed proposal contract.

SECTION 2. Section 103D-701, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The chief procurement officer or a designee shall resolve any protest as expeditiously as possible. If the protest is not resolved by mutual agreement, the chief procurement officer or a designee shall ~~[promptly]~~ issue a written decision ~~[in writing]~~ to uphold or deny the protest. The decision shall:

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

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

SECTION 3. Section 103D-709, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The party initiating a proceeding falling within subsection (d) shall pay to the department of commerce and consumer affairs a cash or protest bond in the amount of:

- (1) ~~\$1,000 for a contract with an estimated value of less than \$500,000;~~
- (2) ~~\$2,000 for a contract with an estimated value of \$500,000 or more, but less than \$1,000,000; or~~
- (3) ~~One-half] one~~ per cent of the estimated value of the contract [~~if the estimated value of the contract is \$1,000,000 or more; provided that in no event shall the required amount of the cash or protest bond be more than \$10,000].~~

If the initiating party prevails in the administrative proceeding, the cash or protest bond shall be returned to that party. If the initiating party does not prevail in the administrative proceeding, the cash or protest bond shall be deposited into the general fund.”

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

SECTION 5. This Act shall take effect upon its approval.

(Approved July 6, 2021.)

Note

- 1. So in original.