

ACT 180

S.B. NO. 3372

A Bill for an Act Relating to Public Procurement.

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

SECTION 1. Section 103D-707, Hawaii Revised Statutes, is amended to read as follows:

“§103D-707 Remedies after an award. (a) If after an award it is determined that a solicitation or award of a contract is in violation of law, then:

- (1) If the person awarded the contract has not acted fraudulently or in bad faith:
 - (A) The contract may be ratified and affirmed, or modified; provided ~~that~~ it is determined that doing so is in the best interests of the State; or
 - (B) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses, other than attorney’s fees, reasonably incurred under the contract, plus a reasonable profit, with such expenses and profit calculated not for the entire term of the contract but only to the point of termination;
- (2) If the person awarded the contract has acted fraudulently or in bad faith:
 - (A) The contract may be declared null and void; or
 - (B) The contract may be ratified and affirmed, or modified, if the action is in the best interests of the State, without prejudice to the State’s rights to such damages as may be appropriate.

(b) If the award of the contract was made in violation of law, and the award is rescinded and the contract, if executed, is terminated or declared null and void, then:

- (1) For solicitations issued pursuant to section 103D-302, the contract may be awarded to the next lowest responsive and responsible bidder; provided that all prices remain the same as originally bid; or
- (2) For solicitations issued pursuant to section 103D-303, the contract may be awarded to the next responsive and responsible offeror whose proposal is determined in writing to be the next most advantageous, taking into consideration the evaluation factors set forth in the solicitation; provided that all prices remain the same as originally offered.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2022.

(Approved June 27, 2022.)