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LATE TESTIMONY

TESTIMONY
OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE
ON
TOURISM AND GOVERNMENT OPERATIONS
ON
February 5, 2008

S.B. 2827

RELATING TO PUBLIC CONTRACTS

Chair Nishihara and members of the Committee, thank you for the opportunity to testify on S.B. 2827.

The Department of Accounting and General Services (DAGS) supports S.B. 2827. DAGS believes that making the procurement of goods and services more transparent by requiring purchasing agencies, when posting public contract awards made pursuant to 103D-303, HRS, and 103D-304, HRS for professional services less than the limits of 103D-305, HRS, to include information regarding the basis for the award, will improve the public's confidence in the fairness of state and county procurements. It will also provide competing contractors with the information they need to file protests, if appropriate, in a timely manner.

Thank you for the opportunity to testify on this matter.

LATE TESTIMONY



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GOVERNOR

AARON S. FUJIOKA
ADMINISTRATOR

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TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
SENATE COMMITTEE
ON
TOURISM AND GOVERNMENT OPERATIONS

February 5, 2008

SB 2827

RELATING TO PUBLIC CONTRACTS.

Chair Nishihara, Vice Chair Kim and committee members, thank you for the opportunity to testify on SB 2827. This bill proposes to require purchasing agencies to provide award information when posting the awards for competitive sealed proposals and professional services awards to assist vendors in determining if there is a cause to file a protest.

The State Procurement Office (SPO) supports the intent of this bill to provide non-selected offerors and providers of professional services with essential facts to determine if a protest of the award is warranted. Written notification to the non-selected offeror will foster the integrity and transparency in the competitive process.

The attachments are submitted for your consideration on the proposed amendments:

ATTACHMENT A - In lieu of bill amendments to §103D-303, attachment proposes amendment for applicability to both the competitive sealed bid and proposal process pursuant to §103D-302 and 303 by amending §103D-701 to address the concerns on notification of protest.

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ATTACHMENT B – Propose the bill amendment to 103D-304(k), HRS be deleted, and amend §103D-304(i), as this is the appropriate subsection to address the posting of award for professional services. The *State and County Professional Services Awards* website at <http://www4.hawaii.gov/professionalservices/ShowProf.cfm> provides current award data, and includes information to be equal to or more important to the non-selected persons and the general public for the transparency of the procurement. .

We believe our proposed revisions addresses the concerns of this bill.

Thank you.

ATTACHMENT A

§103D-701 Authority to resolve protested solicitations and awards. (a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the chief procurement officer or a designee as specified in the solicitation. Except as provided in sections 103D-303 and 103D-304, a protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest of an award or proposed award shall in any event be submitted in writing within five working days after the posting of award of the contract under section 103D-302 or 103D-303, if no request for debriefing has been made, as applicable; provided further that no protest based upon the content of the solicitation shall be considered unless it is submitted in writing prior to the date set for the receipt of offers.

(b) The purchasing agency shall notify in writing all offerors that submitted a proposal of their non-selection at least one day prior to the posting of award; provided the posting of award shall include, if applicable, but not be limited to the:

- (1) Offerors submitting a proposal;
- (2) Numerical scores of the evaluation committee for the acceptable and potentially acceptable proposal; and if a best and final offer was requested, the name(s) of the priority-listed offeror(s) and their final numerical score;
- (3) Name of the successful offeror and the dollar amount of the award; and
- (4) Basis for award.

(c) The chief procurement officer or a designee, prior to the commencement of an administrative proceeding under section 103D-709 or an action in court pursuant to section 103D-710, may settle and resolve a protest concerning the solicitation or award of a contract. This authority shall be exercised in accordance with rules adopted by the policy board.

~~(e)~~(d) If the protest is not resolved by mutual agreement, the chief procurement officer or a designee shall promptly issue a 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.

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

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

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

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

ATTACHMENT B

§103D-304 on procurement of professional services

(i) Contracts awarded under this section for \$5,000 or more shall be posted electronically within seven days of the contract award by the chief procurement officer or designee and shall remain posted for at least one year. Written notification to the non-selected person submitted under subsection (g) shall be sent at least one day prior to the posting. Information to be posted shall include, but not be limited to:

- (1) The names of the persons submitted under subsection (g), including the ranking;
- (2) The name of the person or organization receiving the award;
- (3) The dollar amount of the contract;
- (4) The name of the head of the purchasing agency or designee making the selection;
and
- (5) Any relationship of the principals to the official making the award.