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**TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE**

**TO THE
SENATE COMMITTEE
ON
JUDICIARY AND LABOR**

February 22, 2008

SB 2867, SD1

RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE.

Chair Taniguchi, Vice Chair Hee and committee members, thank you for the opportunity to testify on SB 2867, SD1. This bill would require that any false information or misrepresentation knowingly submitted in order to obtain a procurement contract under HRS Chapter 103D be a basis for not awarding to an offeror, and require a mandatory one year suspension from bidding, submitting, or being awarded any contract.

The State Procurement Office supports this bill that provides consequences to an offeror or an affiliate of the offeror that knowingly attempts to deceive procurement officers and to negate the integrity of the Hawaii Procurement Code. To simplify the applicability to all source selection methods (sole source, emergency, professional services, IFB, RFP, small purchase), in lieu of the amendments to each source selection, recommend the following changes:

- Delete term 'affiliate' and replace with 'subcontractor'. Chapter 103D rules include a definition for 'subcontractor' that means any person who enters into an agreement with the contractor to perform a portion of the work for the contractor. The term 'affiliate' would need to be defined in HRS;
- Insert in §103D-310, Responsibility of offerors, the new provision to address submittal of false information or misrepresentation by an offeror/bidder; and
- Reference §103D-702 on Authority to debar or suspend, as the applicable section to address suspension and the person's rights for review.

The attachment is submitted for your consideration on the proposed amendments. Thank you.

ATTACHMENT
S.B. 2867, SD1

§103D-310 Responsibility of offerors. (a) Unless the policy board, by rules, specifies otherwise, before submitting an offer, a prospective offeror, not less than ten calendar days prior to the day designated for opening offers, shall give written notice of the intention to submit an offer to the procurement officer responsible for that particular procurement.

(b) Whether or not an intention to bid is required, the procurement officer shall determine whether the prospective offeror has the financial ability, resources, skills, capability, and business integrity necessary to perform the work. For this purpose, the officer, in the officer's discretion, may require any prospective offeror to submit answers, under oath, to questions contained in a standard form of questionnaire to be prepared by the policy board. Whenever it appears from answers to the questionnaire or otherwise, that the prospective offeror is not fully qualified and able to perform the intended work, a written determination of nonresponsibility of an offeror shall be made by the head of the purchasing agency, in accordance with rules adopted by the policy board. The unreasonable failure of an offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such offeror. The decision of the head of the purchasing agency shall be final unless the offeror applies for administrative review pursuant to section 103D-709.

(c) All offerors, upon award of contract, shall comply with all laws governing entities doing business in the State, including chapters 237, 383, 386, 392, and 393. Offerors shall produce documents to the procuring officer to demonstrate compliance with this subsection. Any offeror making a false affirmation or certification under this subsection shall be suspended from further offerings or awards pursuant to section 103D-702. The procuring officer shall verify compliance with this subsection for all contracts awarded pursuant to sections 103D-302, 103D-303, 103D-304, and 103D-306; provided that the attorney general may waive the requirements of this subsection for contracts for legal services if the attorney general certifies in writing that comparable legal services are not available in this State.

(d) Any false information or misrepresentation knowingly placed in the bid by a bidder or affiliate of a bidder subcontractor shall be a basis for not awarding the bid to that bidder or the bidder's affiliatesubcontractor. Additionally, the chief procurement officer shall place the bidder or affiliate of the bidder, as applicable, on apply the provisions of section 103D-702, that may include a one year mandatory suspension from bidding for any contract under this chapter, if, after affording the bidder a reasonable opportunity to be heard, the chief

~~procurement officer finds that the bidder or affiliate of the bidder knowingly placed false information or any misrepresentation in a bid consideration of award.~~

(e) Information furnished by an offeror pursuant to [this section] subsections (a), (b), and (c) shall not be disclosed to any person except to law enforcement agencies as provided by chapter 92F.

LINDA LINGLE
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TESTIMONY
OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE
ON
JUDICIARY AND LABOR
ON
February 22, 2008

S.B. 2867, S.D. 1

RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE

Chair Taniguchi and members of the Committee, thank you for the opportunity to testify on S.B. 2867, S.D. 1.

The Department of Accounting and General Services supports the intent of this bill. However, it only applies to Sections 103D-302 (IFB) and 103D-303 (RFP). It should apply to all source selection methods - 103D-304 (Professional Services), -305 (Small Purchases), -306 (Sole Source), and -307 (Emergency).

Thank you for the opportunity to testify on this matter.