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TESTIMONY
OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
ECONOMIC DEVELOPMENT & BUSINESS CONCERNS
ON
March 11, 2008

S.B. 2867, S.D. 2

RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE

Chair Yamashita and members of the Committee, thank you for the opportunity to testify on S.B. 2867, S.D. 2.

The Department of Accounting and General Services supports the intent of this bill. By changing the responsibilities of offerors under 103D-310(d) and (e), this bill will discourage the provision of false information by offerors in order to win awards of contracts under all source selection methods.

Thank you for the opportunity to testify on this matter.

LINDA LINGLE
GOVERNOR

AARON S. FUJIOKA
ADMINISTRATOR



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TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
HOUSE COMMITTEE
ON
ECONOMIC DEVELOPMENT & BUSINESS CONCERNS

March 11, 2008

SB 2867, SD 2

RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE.

Chair Yamashita, Vice Chair Wakai and committee members, thank you for the opportunity to testify on SB 2867, SD2. This bill requires 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 consideration of an award.

The State Procurement Office supports this bill that provides consequences to an offeror or a subcontractor of the offeror that knowingly attempts to deceive procurement officers and to negate the integrity of the Hawaii Procurement Code. To be consistent with the language of statutes on procurement and applicability to any procurement method, recommend the following changes to page 3, lines 4 to 7.

(d) Any false information or misrepresentation knowingly placed in the bid solicitation of the bidder offeror or subcontractor shall be a basis for not awarding the bid a contract to that bidder offeror or the bidder's offeror's subcontractor. In addition, the chief procurement officer shall apply the provisions of section 103D-702, provided that the chief procurement officer shall include a one year mandatory suspension from consideration of award.

SB 2867, SD 2
House Committee on Economic Development
& Business Concerns
March 11, 2008
Page 2

Chapter 103D rules include definitions for 'solicitation' that means an invitation for bids, a request for proposals, a request for quotations, or any other document issued by the State for the purpose of soliciting bids or proposal to perform a state contract; and for 'offeror' means any individual, partnership, firm, corporation, joint venture, or other legal entity submitting, directly or through a duly authorized representative or agent, an offer for the good, service, or construction contemplated.

Thank you.

ATTACHMENT
S.B. 2867, SD2

§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 solicitation of the bidder offeror or subcontractor shall be a basis for not awarding the bid a contract to that bidder offeror or the bidder's offeror's subcontractor. In addition, the chief procurement officer shall apply the provisions of section 103D-702, provided that the chief procurement officer shall include a one year mandatory suspension from 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.