

Honolulu, Hawaii

April 30, 2009

RE: H.B. No. 1470
H.D. 1
S.D. 1
C.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir and Madam:

Your Committee on Conference on the disagreeing vote of the House of Representatives to the amendments proposed by the Senate in H.B. No. 1470, H.D. 1, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO HAWAII PUBLIC PROCUREMENT CODE,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this bill is to update the Hawaii Public Procurement Code (Code) to expedite Hawaii's ability to use and benefit from federal economic stimulus funds by, among other things:

- (1) Exempting federal General Services Administration-approved sole source vendors from the Code in procurements funded by state and federal matching funds;
- (2) Increasing the \$50,000 limit on procurements qualifying for certain small purchase procedures, to \$100,000 for goods or services, and \$250,000 for construction;



- (3) Strengthening the preference for Hawaii products by:
 - (A) Defining "Hawaii input";
 - (B) Increasing from 25 percent to more than 50 percent, the percentage of Hawaii input needed for a product to qualify as a Hawaii product;
 - (C) Establishing two classes of Hawaii products, class I where the Hawaii input exceeds 50 percent, and class II where an agricultural or similar product is raised grown, or harvested in the state;
 - (D) Providing a ten percent reduction in the bid price for class I products, and 15 percent for class II products;
 - (E) Allowing Hawaii product offerors to self-certify, subject to invalidation of the contract and the penalties of debarment or suspension;
- (4) Requiring dismissal of protests based on an inadvertent error in the competing bid amounting to not more than one percent of the bid amount;
- (5) Establishing a limit of 30 days for administrative review of procurement decisions, ten days to transmit the record of administrative proceedings to the Circuit Court, and 30 days for judicial review;
- (6) Limiting protests of bid and request for proposals contract awards under section 103D-302 or 103D-303, Hawaii Revised Statutes (HRS), to matters equal to not less than ten percent of the contract value; and
- (7) Requiring the initiating party to pay a cash or protest bond equal to one percent of contracts valued at \$1,000,000 or more, which must be forfeited to the State if the party does not prevail.

Your Committee on Conference has amended this bill by:

- (1) Restricting the performance bond requirement for small purchase construction procurements, to contracts of more than \$50,000;



- (2) Providing that no exemptions from the Code apply to fresh meats, produce, animals, and plants, other than those listed in section 103D-102(b), HRS;
- (3) Removing the definitions of "Hawaii component" and "Hawaii product";
- (4) Removing the provisions requiring dismissal of protests concerning inadvertent errors amounting to less than one percent of the bid amount;
- (5) Requiring the State Procurement Office to keep statistics of protests of the solicitation or award of a contract, including protests involving inadvertent errors, for the purpose of improving procurement procedures;
- (6) Making fact finding under section 91-10, HRS, of the Administrative Procedure law, applicable to the administrative review of a procurement decision, instead of the Hawaii Rules of Evidence;
- (7) Requiring administrative hearings officers to issue a written decision no later than 45 days after receiving a request for review;
- (8) Providing that persons protesting the solicitation or award of a contract under the bid or request for proposals procedures of section 103D-302 or 103D-303, HRS:
 - (A) May request an administrative review if:
 - (i) The contract has an estimated value of less than \$1,000,000 and the protest concerns a matter that is greater than \$10,000; or
 - (ii) The contract has an estimated value of \$1,000,000 or more, and the protest concerns a matter equal to no less than ten percent of the contract;
 - (B) Must post a cash or protest bond:
 - (i) In the amount of \$1,000 for a contract with an estimated value of less than \$500,000;



- (ii) In the amount of \$2,000 for a contract with an estimated value of \$500,000 or more, but less than \$1,000,000;
 - (iii) In the amount of one-half percent of the total estimated value of the contract if the total estimated value of the contract is \$1,000,000 or more, and capping the bond at \$10,000; and
 - (iv) Which must be deposited into the general fund if the initiating party does not prevail;
- (9) Providing that if an application for judicial review is not resolved by the 30th day from filing, the court shall lose jurisdiction and the decision of the hearings officer shall not be disturbed;
- (10) Allowing the procurement protest and dispute provisions of the bill to be evaluated by providing that they will sunset on July 1, 2011; and
- (11) Making technical, nonsubstantive amendments for purposes of clarity, consistency, and style.


As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of H.B. No. 1470, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1470, H.D. 1, S.D. 1, C.D. 1.

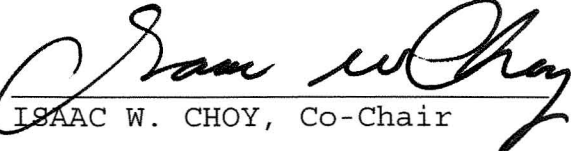
Respectfully submitted on behalf
of the managers:

ON THE PART OF THE SENATE


BRIAN T. TANIGUCHI, Chair

ON THE PART OF THE HOUSE


ANGUS L.K. MCKELVEY, Co-Chair


ISAAC W. CHOY, Co-Chair





BLAKE K. OSHIRO, Co-Chair



CCR 45

Hawaii State Legislature

Record of Votes of a Conference Committee

Bill / Concurrent Resolution No.: HB 1470, HD 1, SD 1	Date/Time: 4/29/09 @ 3:15 pm
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The recommendation of the House and Senate managers is to pass with amendments (CD).

The Committee is reconsidering its previous decision.

<input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure	<input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.
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Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
TANIGUCHI, Brian T., Chr.	✓				MCKELVEY, Angus L.K., Co-Chr.	✓			
TAKAMINE, Dwight Y.	✓				CHOY, Isaac W., Co-Chr.	✓			
SLOM, Sam				✓	OSHIRO, Blake K., Co-Chr.	✓			
					WARD, Gene				✓
TOTAL	2			1	TOTAL	3			1

A = Aye WR = Aye with Reservations N = Nay E = Excused

Senate Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted	House Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted
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Senate Lead Chair's or Designee's Signature: 	House Lead Chair's or Designee's Signature:
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