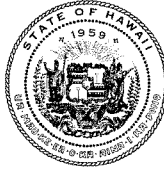


LINDA LINGLE  
GOVERNOR



RUSS K. SAITO  
Comptroller  
BARBARA A. ANNIS  
Deputy Comptroller

**STATE OF HAWAII  
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TESTIMONY  
OF  
RUSS K. SAITO, COMPTROLLER  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
TO THE  
HOUSE COMMITTEE  
ON  
FINANCE  
ON  
March 2, 2009

H.B. 638, H.D. 1

RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE

Chair Oshiro and members of the Committee, thank you for the opportunity to testify before you on H.B. 638, H.D. 1.

The Department of Accounting and General Services (DAGS) opposes H.B. 638, H.D. 1. DAGS believes this bill is unnecessary. If a bidder files a protest because a competing bidder has made an error in calculation that is less than one percent, and the difference does not change the lowest bidder, the award may be allowed to stand. There is no need to create a change in the law to address this situation.

This bill also limits bid or proposed protests to only those situations in which the matter being protested is no less than 10% of the total estimated contract costs. It requires the protestor to pay a protest bond of 1% or \$50,000 for contracts equal to or greater than \$1,000,000 and calls for the protestor, if the protest is denied, have 50% of the protest bond amount deposited into the compliance resolution fund and 50% deposited into the general fund. This will discourage parties from filing protest and

insulate the procurement process from the kinds of improvements in procedure and personnel procurement expertise that can result from protests against the inefficiencies or openness of certain specific procurements.

The value of the Procurement Code is not in making things easy or expedient to procuring agencies but to make things fair, open and transparent for contractors that are qualified and interested in providing goods, services, or construction to government. The protest process promotes this value.

DAGS recommends that this bill be held.

Thank you for the opportunity to testify on this matter.

LINDA LINGLE  
GOVERNOR



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TESTIMONY  
OF  
AARON S. FUJIOKA  
ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE  
HOUSE COMMITTEE  
ON  
FINANCE

March 2, 2009

11:30 a.m.

HB 638, HD1

RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE.

Chair Oshiro, Vice-Chair Lee and committee members, thank you for the opportunity to testify on HB 638, HD1. This bill proposes a remedy to a protest involving an inadvertent error in HRS §103D-302, limits administrative hearing on estimated value of a contract and requires cash or protest bond.

The State Procurement Office (SPO) is unclear as to how the provisions of this bill would occur and apply. Awards under HRS §103D-302 for competitive sealed bids are required to be made to the lowest responsible and responsive Offeror. The purchasing agency is responsible to ensure that the Offeror determined to have submitted the lowest responsible and responsive offer, is awarded the contract. In the situation where an Offeror's bid contains an obvious mistake, the agency is permitted to allow a correction or withdrawal of the bid provided the Offeror requests this action based on an obvious error, and is prior to award. If after award a correction of an inadvertent error is allowed, and this action causes a change to the lowest responsible and responsive bid, then the agency must cancel the erroneous award and award to the Offeror whose corrected bid becomes the lowest responsible and responsive offer.

To protect the integrity and foster fairness in the procurement process, the basis to file or dismiss a protest under HRS §103D-701 should not solely be based on a negligible difference of dollar amount between competing Offerors's bids.

HB 638, HD1  
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With regards to revisions to HRS §103D-701, although the SPO supports the intent to reduce frivolous protests we have not seen data to substantiate any percentage that these types of protests that are heard by DCCA are frivolous or trivial. The proposed language would affect all protests and any protest that is denied would be charged a fee. This provision may reduce frivolous protests if that can be defined and determined, but will also have a chilling effect on non-frivolous protests.

Recommend this bill be held.