

HB2441, HD2

LINDA LINGLE
GOVERNOR



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TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
SENATE COMMITTEES
ON
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS
AND
TRANSPORTATION, INTERNATIONAL, AND INTERGOVERNMENTAL AFFAIRS

March 12, 2010

1:15 p.m.

HB 2441, HD2

RELATING TO PROCUREMENT.

Chair Hee, Chair English, Vice Chair Tokuda, Vice Chair Gabbard, and committee members, thank you for the opportunity to testify on HB 2441, HD2.

This bill creates a new section to part III of Chapter 103D related to contract award deadlines to require contracts be awarded within thirty days of the bid opening date limited to projects of the state departments of Hawaiian home lands and transportation, county boards of water supply, and county departments of housing, planning and permitting, and transportation, which should not be limited, but applicable to all governmental agencies. Part III of Chapter 103D applies to the six procurement methods, and this new provision should be limited to the competitive sealed bidding and competitive sealed proposals procurement methods. The bill also adds limitations and extension provisions, and requires procurements for design professional services to be awarded within 45 days of bid opening date. The State Procurement Office (SPO) does not support this bill as it appears to address a policy issue within the specified departments.

Reviews of procurement documents are to ensure award will be made to the responsive and responsible bidder, taking into consideration all factors to be evaluated such as specifications, qualifications, capability, compliance requirements, etc. On less complicated solicitations the review, evaluation and award may be completed within 30 days, however, on more complex, detailed solicitations, all documents need to be verified prior to an award. With the downsizing of government, these agencies may already be having resource issues affecting the review of the procurement documents on a timely basis. This review process may also be delayed not by the agency, but by the offeror not furnishing the necessary documents in a timely manner.

HB 2441, HD2
Senate Committees on Water, Land, Agriculture,
and Hawaiian Affairs and Transportation, International,
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Procurement of professional services is qualification based, and there is no bid opening. Statements of qualifications are requested by an agency and a review committee places the qualified applicants on a listing. When a need or project arises, a selection committee reviews the statements of qualifications, ranks the submittals, and begins negotiations with the first ranked provider. A time limitation for award is not conducive to the professional services procurement method.

This proposed bill would not accomplish the goal of striking a balance between expedited procedures and necessary accountability and transparency, and will likely compromise the evaluation process if award is required within a strict time period as these agencies will need to make award but contingent upon completing the requirements noted above. Additionally, if an agency is not able to meet this statutory timeline, then the solicitation would be invalid and may require re-solicitation, adding further delays to the process.

However, if this bill moves forward, ATTACHMENT A is provided for your consideration for further discussion.

Thank you.

ATTACHMENT A

~~"§103D- **Contract award deadlines.** Notwithstanding any other statute or administrative rule relating to procurement, contracts pursuant to 103D-302 and 103D-303, for projects of the state departments of Hawaiian home lands and transportation, county boards of water supply, and county departments of housing, planning and permitting, and transportation the procurement officer shall be ensure that awarded be made within thirty days of the offer due date; provided that: the procurement officer may determine in writing when an extension of time is necessary due to delays in award.~~

~~—(1) The limitation shall not apply if the lowest responsible bid exceeds available funding;~~

~~—(2) An extension, not exceeding — business days, shall be permitted if the extension will provide the opportunity for further negotiations with the lowest responsible bidder relating to considerations that could result in benefits to the public; and~~

~~—(3) Contracts for design professional services furnished by licensees under chapter 464 shall be awarded within forty five days of the opening date of the bid."~~

CHARMAINE TAVARES
Mayor



KALBERT K. YOUNG
Director of Finance

AGNES M. HAYASHI
Deputy Director of
Finance

COUNTY OF MAUI
DEPARTMENT OF FINANCE
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793

March 11, 2010

The Honorable Clayton Hee, Chair
The Honorable Jill N Tokuda, Vice Chair
And Members, Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs

The Honorable J. Kalani English, Chair
The Honorable Mike Gabbard, Vice Chair
And Members, Senate Committee on Transportation, International and Intergovernmental Affairs

RE: HB2441, HD2, RELATING TO PROCUREMENT

Dear Chairs Hee and English, Vice Chairs Tokuda and Gabbard, and Committee Members:

The County of Maui strongly opposes a requirement that any County department would have to award all contracts within 30 days after a bid opening, or the date that proposals are due. As an example, a complex software acquisition can require hundreds of hours for proposal evaluation, reference checks, and vendor presentations. It can take 6 months of diligent effort to complete the process for committee members juggling their normal responsibilities. In general, the imposition of strict deadlines for awarding a contract will force the County of Maui to utilize the Chief Procurement Officer exemption for many of our procurements.

The County does support the intent of the construction industry task force to speed up the process with respect to construction related bids. However, there are numerous impediments to doing so, including:

1. The protest process and all other due process avenues for contractors. Protests and subsequent DCCA and court procedures can tie up and delay the award of a contract for months or years.
2. Potential delays due to other project efforts such as permitting, environmental assessments, easement issues, etc. Various project tasks are often done concurrently with the project design and bid processes to speed up a project.
3. The County has inadequate funding and the county needs to investigate alternative financing options after the bid opening. The County assumes that it would be better for all parties to extend the award date rather than have to cancel the solicitation and start over with contractor's prices exposed.
4. Occasionally, project design inadequacies surface during the bid process or after the bid opening, and it would not be prudent for the project to continue as is. The County would need to be able to cancel the solicitation and re-solicit under existing provisions without violating a 30 day award requirement.

Thank you for considering this testimony.

Sincerely,

A handwritten signature in black ink, appearing to read "Kalbert K. Young".

Kalbert K. Young
Director of Finance

William P. Kenoi
Mayor



Nancy E. Crawford
Director

Deanna S. Sako
Deputy Director

County of Hawaii

Finance Department

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March 9, 2010

The Honorable Senator Clayton Hee, Chair,
and Members of the Senate Committee on Water, Land, Agriculture and Hawaiian Affairs.
The Honorable Senator J. Kalani English, Chair,
and Members of the Senate Committee on Transportation, International and Intergovernmental Affairs
Hawai'i State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Dear Chairs Hee and English, and Members of the Committees:

RE: Testimony in Opposition to H.B. 2441, H.D.2, Relating to Procurement
Hearing Friday, March 12, 2010, at 1:15 p.m., Conference Room 224

Hawai'i County opposes H.B. 2441, H.D.2, which requires contracts to be awarded within thirty days of the bid opening date for projects of the state departments of Hawaiian home lands and transportation, county boards of water supply, and county departments of housing, planning and permitting, and transportation.

The referenced bill refers to "bid opening date", however nothing in the bill limits its applicability to only invitations for bids (IFB). Applying a 30-day award requirement to requests for proposals (RFP) does not allow for further negotiations or best and final offers. Most contracts for Hawai'i County Housing, Planning or Transit departments would be procured through RFPs or professional services selection processes.

Even with IFBs, reviews of procurement documents are necessary to ensure award will be made to the responsive and responsible bidder, taking into consideration all factors to be evaluated such as specifications, qualifications, capability, compliance requirements, etc. Thirty days is not a feasible time frame in which to accomplish all of this. The review and award process may also be delayed because the bidder does not furnish necessary documentation in a timely manner. Accountability and transparency would be compromised by this expedited process.

Additionally, sub-section (3) of the proposed new language refers to contracts with licensees under HRS Chapter 464 as having a bid opening date. HRS 103D-304-(a) requires that contracts with Chapter 464 licensees be procured only through professional services selection, which does not involve a bid or bid opening date. The result of this legislation would be a conflict between HRS sections.

The requirements of this bill would prove counter-productive to the procurement process. Thank you for your attention to our concerns. We urge you to file H.B. 2441, H.D.2.

Sincerely,

Nancy Crawford
Director of Finance



HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO
 Gentry Pacific Design Center, Suite 215A * 560 N. Nimitz Highway, #50 * Honolulu, Hawaii 96817
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DAMIAN T.K. KIM
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MALCOLM K. AHLÖ
 Sergeant At Arms
 Carpet, Linoleum, & Soft Tile
 Local 1296

REGINALD CASTANARES
 Trustee
 Plumbers & Fitters Local 675

THADDEUS TOMEI
 Elevator Constructors Local 126

JOSEPH BAZEMORE
 Drywall, Tapers, & Finishers
 Local 1944

RICHARD TAGGERE
 Glaziers, Architectural Metal &
 Glassworkers Local 1944

GARY AYCOCK
 Boilermakers, Ironship Builders
 Local 627

LYNN KINNEY
 District Council 50
 Painters & Allied Trades Local 1791

EUGENE SOQUENA
 Operating Engineers Local 3

DOUGLAS FULP
 International Assoc. of Heat & Frost
 Insulators & Allied Workers Local 132

RONAN KOZUMA
 Hawaii Teamsters & Allied
 Workers Local 996

PETER GANABAN
 Laborers' International Union of
 North America Local 368

VAUGHN CHONG
 Roofers, Waterproofers & Allied
 Workers United Union of Roofers
 Local 221

March 11, 2010

Honorable Senator Clayton Hee, Chair
 Honorable Senator Jill N. Tokuda, Vice Chair
 Members of the Senate Committee on Water, Land, Agriculture and
 Hawaiian Affairs
 Hawaii State Capitol
 415 South Beretania Street
 Honolulu, HI 96813

RE: **IN SUPPORT OF HB 2441**
RELATING TO PROCUREMENT.
 Hearing: Friday, March 12, 2010, 1:15 p.m., Room 224

Dear Chair Hee, Vice Chair Tokuda, and the Senate Committee on
 Water, Land, Agriculture and Hawaiian Affairs:

For the Record my name is Buzz Hong the Executive Director for the
 Hawaii Building & Construction Trades Council, AFL-CIO. Our Council
 is comprised of 16-construction unions and a membership of 26,000
 statewide.

The Council SUPPORTS the passage of HB 2441 that requires that
 contracts for various state and county projects are awarded within 30
 days after the bids are opened, subject to reasonable qualifications as
 defined in the bill, and imposing a 45 day limit on contracts for design
 professional services. This will help speed the construction of new
 public works projects, and lower costs faced by companies bidding on
 major state and county projects, helping to guarantee jobs for local
 workers while protecting taxpayers.

Thank you for the opportunity to submit this testimony in support of
HB 2441.

Sincerely,

William "Buzz" Hong
 Executive Director

WBH/hm

The Pacific Resource
PARTNERSHIP



Testimony of C. Mike Kido
External Affairs
The Pacific Resource Partnership

Senate Committee on Water, Land, Agriculture and Hawaiian Affairs
Senator Clayton Hee, Chair
Senator Jill Tokuda, Vice Chair

Senate Committee on Transportation, International and Intergovernmental Affairs
Senator J. Kalani English, Chair
Senator Mike Gabbard, Vice Chair

HB 2441, HD2 – Relating to Procurement
Friday, March 12, 2010
1:15 PM
Conference Room 224

ADDENDUM

Chair Hee, Chair English and members of the committees:

My name is C. Mike Kido, External Affairs for the Pacific Resource Partnership (PRP), a labor-management consortium representing over 240 signatory contractors and the Hawaii Carpenters Union.

PRP **supports** the purpose and intent of HB 2441, HD2 – Relating to Procurement, which requires contracts awarded to projects of the departments of Hawaiian home lands and transportation; county boards of water supply; and county departments of housing, planning and permitting, and transportation to be awarded within 30 days of the bid opening date, subject to sufficient available funding and possible further negotiations to benefit the public.

In response to Department of Transportation's previous testimony, we also respectfully request that "Section 2 be amended to delete Section 103D-102 (e) (3), Hawaii revised Statutes ("HRS"). This provision relates to contracts for design professional services furnished by licensees under chapter 464." PRP kindly request the HRS to be revised to read:

"Contracts for design-build projects shall be awarded within forty-five days of after the opening of proposals."

The Construction Industry Task Force (established task force as indicated in the Senate Concurrent Resolution No. 132, S.D. 1, Regular Session of 2009, to determine the economic contributions of the construction industry in Hawaii) made a recommendation

Testimony of Mike Kido
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to "Require All State Departments to Award Contracts on Bids within 30 Days."
"Hawaii's public procurement process requires protracted periods of time between each procurement step. Currently the awarding of a contract is subject to prolong review, thereby preventing a project from proceeding in a timely manner. The legislature finds that in this period of high economic turmoil, procedural changes are necessary to enable the State to achieve a quick recovery and to provide effective economic stimulation."

Thank you for the opportunity to share our opinion and we kindly ask for your support of HB 2441, HD2 – Relating to Procurement.

The following information provides Third Party review relevant activity statistics from the City & County of Honolulu:

FY 2008-2009

31 individuals and 7 firms certified. 487 projects processed under third party review of which 443 approved to issue or under construction.

FY 2007-2008

25 individuals and 6 firms certified. 503 projects processed under third party review of which 374 approved to issue or under construction.

FY 2006-2007

20 individuals and 5 firms certified. 527 projects processed under third party review of which 342 approved to issue or under construction.

FY 2005-2006

18 individuals and 6 firms certified. 122 projects processed under third party review of which 72 approved to issue or under construction.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

March 9, 2010

TO: THE HONORABLE SENATOR CLAYTON HEE, CHAIR AND MEMBERS OF THE COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

THE HONORABLE SENATOR KALANI ENGLISH, CHAIR AND MEMBERS OF THE COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS

SUBJECT: H.B. 2441, HD2 RELATING TO PROCUREMENT.

NOTICE OF HEARING

DATE: Friday, March 12, 2010
TIME: 1:15 p.m.
PLACE: Conference Room 224

Dear Chairs and Members of the Joint Committee:

The General Contractors Association (GCA), an organization comprised of over five hundred and seventy (570) general contractors, subcontractors, and construction related firms, **supports** the passage of H.B. 2441, HD2, Relating to Procurement, with certain suggested amendments

This bill would require that contracts awarded by the state departments of Hawaiian home lands and transportation, county boards of water supply, and county departments of housing, planning and permitting, and transportation be awarded within thirty (30) days of the bid opening date. This proposed change in the state's procurement procedure was one of the recommendations of the task force formed by Senate Concurrent Resolution 132, S.D. 1 adopted by the 2009 Legislature. HD1 and HD2 amended the bill to require award of professional services contracts within 45 days (in lieu of 30 days) of the bid opening date. As a construction organization, we defer to the design community to comment on the amended deadline for design professionals. In general, we believe that this measure will update and speed up the current procurement procedure for construction projects so vital in helping to stimulate the current stagnant state of the economy.

However, we respectfully offer the following amendments for your consideration:

1. We believe the bill should be applied to all procurement agencies subject to the Procurement Code, not just the selected agencies named in the bill.
2. The 30-day deadline after bid opening for award of construction projects should only apply to procurements under HRS Section 103D-302 Competitive sealed bidding (low-bid solicitations) where evaluation of bids is generally a ministerial function and would not require extensive review by procurement officers. The GCA suggests deferring application to other procurement sections requiring more in-depth/subjective reviews pending experience with the new low-bid deadline.

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Testimony on H.B. 2441, HD2, Relating to Procurement

Friday, March 12, 2010

Room 224

3. The bill's wording should make clear that the award would authorize the contractor to begin ordering materials immediately thereafter to minimize the risks of volatile material price fluctuations after its fixed price bid proposal. The GCA believes that the State and City will benefit by more competitive construction bids if a bidder can expect being able to fix its material costs within 30 days of its firm bid proposal.
4. In order for all offerors to be able to minimize its risks of price fluctuations on a fixed price bid proposal and provide the State/City with its most competitive bid price, we believe any exception to the award deadlines should provide an opportunity for any offeror to withdraw its bid beyond the award deadline without penalty.

The GCA **supports** the passage of HB 2441, HD2 with the above suggested amendments and recommends that the committee pass the bill.

Thank you for the opportunity to provide our views on this issue.

Testimony In support of HB2441, HD2 Relating to Procurement

By Al Lardizabal, Director of Government Relations
Hawaii Laborers' Union

To the Senate Joint Committee on Water, Land, Agriculture and Hawaiian Affairs;
Senate Committee on Transportation, International and Intergovernmental Affairs

March 12, 2010, 1:15 p.m.
State Capitol, Room 224

Chairman Clayton Hee, Chairman J. Kalani English and Members of the Joint
Committee:

The Hawaii Laborers' Union supports the intent of HB2441, HD2 that will amend Hawaii Revised Statute 103-D to require all state agencies to award public contracts on bid proposals within thirty (30) days of the bid opening.

The status quo of the current procurement process is inadequate to put Hawaii's people back to work today. Clearly, the manner in which we conduct government procurement needs to change if we want to improve construction work opportunities sooner rather than later.

Thank you for the opportunity to submit this testimony in support of the measure.



LAND USE RESEARCH
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Via: <http://www.capitol.hawaii.gov/emailtestimony>

March 12, 2010

**HB 2441, HD2 Procurement – Expediting the Awarding of Contracts
(State Agencies required to award contracts within 30 days)**

**Senate Committees on Water, Land, Agriculture and Hawaiian Affairs, and
Transportation, International and Intergovernmental Affairs
Hearing Date: Friday, March 12 at 1:15 p.m. in CR 224**

Honorable Chair Clayton Hee, Vice Chair Jill Tokuda and Members of the Senate Committee on Water, Land, Agriculture and Hawaiian Affairs, and Honorable Chair J. Kalani English, Vice Chair Mike Gabbard and Members of the Senate Committee on Transportation, International and Intergovernmental Affairs,

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF **supports HB 2441, HD2**, which requires contracts to be awarded within thirty days of the bid opening date for projects of the certain state and county departments. The bill also adds limitations and extension provisions and requires procurements for design professional services to be awarded within 45 days of bid opening date.

HB 2441, HD2. The purpose of this bill is to require all state agencies, including Department of Hawaiian Homelands, Department of Transportation, County boards of water supply, and county departments of housing, planning and permitting and transportation, to award public contracts on bid proposals within thirty days of the bid opening date.

Background. Senate Concurrent Resolution No. 132, S.D. 1 (2009), established a Construction Industry Task Force to determine the economic contributions of the construction industry in Hawaii. As directed in the concurrent resolution, the Task Force has developed a series of proposals for state actions to preserve and create new

jobs in the local construction industry. The intent of this bill is to implement one of the Task Force's proposals.

LURF's Position. The procurement process in bidding for a project can sometimes take months and involve a drawn out process. As a result, projects are delayed. This bill will shorten the time period of awarding a contract and in turn will expedite the start of construction for projects throughout the State and will result in the generation of construction and other related jobs that are badly needed in the economy.

Accordingly, the purpose of this bill is expedite the bidding process for jobs involving particular state and county agencies to get projects off the ground and put people to work.

We appreciate the opportunity to present our **support of HB 2441, HD2**, and we ask for your favorable consideration of this bill.

Thank you for the opportunity to express our **strong support for HB 2434, HD2.**