

LINDA LINGLE
GOVERNOR



RUSS K. SAITO
Comptroller

BARBARA A. ANNIS
Deputy Comptroller

**STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
P.O. BOX 119
HONOLULU, HAWAII 96810-0119**

TESTIMONY
OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE
ON
JUDICIARY AND GOVERNMENT OPERATIONS
ON
March 20, 2009

H.B. 638, H.D. 1

RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE

Chair Taniguchi and members of the Committee, thank you for the opportunity to testify 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 protests 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

AARON S. FUJIOKA
ADMINISTRATOR



PROCUREMENT POLICY BOARD
DARRYL W. BARDUSCH
LESLIE S. CHINEN
DARYLE ANN HO
KEITH T. MATSUMOTO
RUSS K. SAITO
PAMELA A. TORRES

STATE OF HAWAII
STATE PROCUREMENT OFFICE
P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 587-4700 Fax: (808) 587-4703
www.spo.hawaii.gov

TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
SENATE COMMITTEE
ON
JUDICIARY AND GOVERNMENT OPERATIONS

March 20, 2009

9:30 AM

HB 638, HD1

RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE.

Chair Taniguchi, Vice-Chair Takamine and committee members, thank you for the opportunity to testify on HB 638, HD1.

The State Procurement Office (SPO) is unclear as to how the provisions of SECTION 1 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
March 20, 2009
9:30 AM
Page 2 of 2

With regards to revisions in SECTION 3 to HRS §103D-709, 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.