

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  
HOUSE COMMITTEE  
ON  
ECONOMIC REVITALIZATION, BUSINESS, & MILITARY AFFAIRS  
ON  
March 17, 2009  
S.B. 687, S.D. 2

RELATING TO PROCUREMENT

Chair McKelvey and members of the Committee, thank you for the opportunity to testify on S.B. 687, S.D. 2.

DAGS supports the intent of this bill. Requiring a final decision to be issued within thirty days of the receipt of the request for hearing will reduce delays in procurements that result from protests of awards and will dispel a major reason why government agencies seek to be exempt from the procurement code. DAGS suggests that the resource requirements of the reviewing office (DCCA) that are necessary to produce the expedited review be determined.

Thank you for the opportunity to testify on this matter.

SB 687 S.D. 2

## LATE TESTIMONY

### COMMITTEE ON ECONOMIC REVITALIZATION, BUSINESS, & MILITARY AFFAIRS

Rep. Angus L.K. McKelvey, Chair  
Rep. Isaac W. Choy, Vice Chair

HEARING: **SB 687 S.D. 2**

DATE: Tuesday, March 17, 2009  
TIME: 7:30 AM  
PLACE: Conference Room 312

My name is Roy Ogawa and I thank you for the opportunity to provide written testimony on SB 687 S.D. 2.

SB 687 S.D. 2 which apparently was an attempt to accelerate the process of disposing of procurement decisions is severely flawed. The Senate Judiciary and Government Operations Committee's decision to delete the prior contents of SB 687 and insert Senate Bill 1036 failed to take into account the ramifications of this bill.

This bill as written goes beyond the expeditious resolution of bid protests and denies due process to all parties involved on all public procurement determinations covered by H.R.S. 103D-709 and H.R.S. 103D-710. This includes H.R.S. 103D-310, Responsibility of offerors; H.R.S. 103D-701, Authority to resolve protested solicitations and awards; and H.R.S. 103D-702, Authority to debar or suspend.

The bill as written **unconstitutionally denies Due Process** to aggrieved parties in all of these covered matters. SB 687 S.D. 2 provides that after 30 days the administrative or judicial body loses jurisdiction over the matter. i.e. *the rights of the aggrieved party "just vanishes"*. An aggrieved party will be denied relief, through no fault of its own if a final administrative decision or a judicial decision is not made by the respective body within 30 days. The Bill provides no mechanism to insure that the administrative body or the court make a determination within the 30 day period. At the present time none of these bodies have the ability or capacity to make such a decision within the 30 day period which will result in a "de facto" denial of due process.

The Bill will allow violations of procurement rules by agencies and bidders by default with no reasonable process for relief. It would also allow a contractor to be improperly debarred or suspended by default with no reasonable due process right to contest the debarment or suspension.

S.B 687 S.D. 2 should be held or revised to rectify the serious flaws in the Bill. If it is revised it should be carefully limited to only apply to certain types of Bid Protests and it should provide for monetary relief for damages to a bidder who played by the rules and lost out to an improper bidder.