

Honolulu, Hawaii

MAR 23 2012

RE: H.B. No. 1671
H.D. 2
S.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committee on Public Safety, Government Operations, and Military Affairs, to which was referred H.B. No. 1671, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Require the State Procurement Office to keep statistics on solicitations and awards protested, including information on protests involving inadvertent errors and amounts forfeited from procurement protests, for the purpose of improving procurement procedures;
- (2) Authorize the chief procurement officer or designee, prior to the commencement of an administrative proceeding or an action in court, to settle and resolve a protest concerning the solicitation or award of a contract within ten business days after receipt of the protest; or, if the protest is not resolved by mutual agreement, to issue a decision in writing to uphold or deny the protest no later than twenty business days after receipt of the protest; and
- (3) Amend procedures for an administrative review of a written decision or order to assess administrative fines due to a violation of the procurement code or of a



protest of the solicitation or award of a contract under the procurement code.

Your Committee received testimony in support of this measure from the Department of Transportation, City and County of Honolulu Department of Budget and Fiscal Services, General Contractors Association, Genba Hawaii, Inc., Healy Tibbitts Builders, Inc., The Pacific Resource Partnership, Royal Contracting Co., Ltd., Ralph S. Inouye Co., Ltd., LYZ, Inc., Hawaii Laborers-Employers Cooperation and Education Trust, and BIA-Hawaii. Testimony in opposition was received from the State Procurement Office. Your Committee received comments on this measure from Department of Commerce and Consumer Affairs Office of Administrative Hearings.

Your Committee finds that the intent of this measure is to simplify and expedite the procurement appeal process by recognizing the procuring agency's experience and expertise in the procurement process, while preserving the right of review of a procuring agency's decision by the Department of Commerce and Consumer Affairs.

Your Committee has amended this measure by:

- (1) Inserting language to amend section 103D-203, Hawaii Revised Statutes, to clarify the use of the terms "chief procurement officer" and "procurement officer", as a conforming amendment;
- (2) Providing procurement officers with the discretion to extend, beyond ten working days after receipt of a protest, the amount of time within which they must settle, resolve, or issue a decision to uphold or deny protests;
- (3) Adding language to require that a written determination by a procurement officer that an award of a contract without delay is necessary to protect substantial interests of the State, pursuant to section 103D-701(f), Hawaii Revised Statutes, shall be final, conclusive, and not subject to appeal;
- (4) Making several amendments to the sections of chapter 103D, Hawaii Revised Statutes, amended in this measure to replace references to "chief procurement officer" and a designee of a chief procurement officer with a



reference to a "procurement officer", which more accurately reflects the respective duties of these officers, and inserting language to replace all references to "chief procurement officer" in chapter 103D, Hawaii Revised Statutes, except section 103D-203, Hawaii Revised Statutes, with the term "procurement officer";

- (5) Changing the effective date to July 1, 2050, to ensure further discussion; and
- (6) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Public Safety, Government Operations, and Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1671, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1671, H.D. 2, S.D. 1, and be referred to the Committees on Judiciary and Labor and Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Public Safety,
Government Operations, and
Military Affairs,



WILL ESPERO, Chair



