

Honolulu, Hawaii

APR 05 2012

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

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

Sir:

Your Committees on Judiciary and Labor and Ways and Means, to which was referred H.B. No. 1671, H.D. 2, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT,"

beg 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) Make 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;
- (3) 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) Authorize the procurement officer, 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 compile a record of the protest;
- (5) 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; and
- (6) Insert 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";

Your Committees received testimony in support of this measure from the General Contractors Association of Hawaii; Waltz Engineering, Inc.; S&M Sakamoto, Inc.; LYZ, Inc.; and Ralph S. Inouye Co., Ltd. The Office of Administrative Hearings of the Department of Commerce and Consumer Affairs and State Procurement Office offered comments.

Your Committees find that the intent of this measure is to simplify and expedite the procurement appeals 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 to the Department of Commerce and Consumer Affairs. This measure retains a bid protester's right to a hearing before the Office of Administrative Hearings, but limits the hearing officer's review to evidence and issues raised in the proceedings before the procuring agency.

Your Committees have amended this measure by:

- (1) Adopting the suggested amendments from the State Procurement Office to delete the definitions for "chief procurement officer" and "procurement officer" and delete the language that replaces "chief procurement officer" with "procurement officer" throughout the



measure, as these substitutions should not be applied to all sections of chapter 103D, Hawaii Revised Statutes;

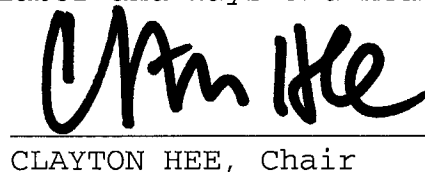
- (2) Adopting the suggested amendments from the General Contractors Association of Hawaii to specify that extensions to settle and resolve a protest concerning a solicitation or award of a contract or to issue a decision if a protest is not resolved by mutual agreement be granted only when necessary for cause;
- (3) Adopting the suggested amendments from the State Procurement Office and General Contractors Association of Hawaii to retain the language authorizing chief procurement officer to determine that the award of the contract without delay is necessary to protect substantial interests of the State;
- (4) Changing the effective date to July 1, 2012; and
- (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Judiciary and Labor and Ways and Means that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 1671, H.D. 2, S.D. 1, as amended herein, and recommend that it pass Third Reading in the form attached hereto as H.B. No. 1671, H.D. 2, S.D. 2.

Respectfully submitted on behalf of the members of the Committees on Judiciary and Labor and Ways and Means,



DAVID Y. IGE, Chair



CLAYTON HEE, Chair



The Senate
 Twenty-Sixth Legislature
 State of Hawai'i

Record of Votes
Committee on Ways and Means
WAM

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 1671 HD2 SD1	PGM, JDL/WAM	4/3/12		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
IGE, David Y. (C)	/			
KIDANI, Michelle N. (VC)	/			
CHUN OAKLAND, Suzanne	/			
DELA CRUZ, Donovan M.	/			
ENGLISH, J. Kalani	/			
ESPERO, Will	/			
FUKUNAGA, Carol	/			
KIM, Donna Mercado	/			
KAHELE, Gilbert	/			
KOUCHI, Ronald D.				/
RYAN, Pohai	/			
TOKUDA, Jill N.				/
WAKAI, Glenn				/
SLOM, Sam	/			
TOTAL	11	0	0	3
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
<i>Michelle N. Kidani</i>				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

*Only one measure per Record of Votes