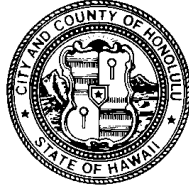


HB1671,HD2,
SD1

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: www.honolulu.gov

PETER B. CARLISLE
MAYOR



MICHAEL R. HANSEN
DIRECTOR

NELSON H. KOYANAGI, JR.
DEPUTY DIRECTOR

TESTIMONY OF MICHAEL R. HANSEN, DIRECTOR
DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU

Sen. Clayton Hee, Chair,
and Members of Committee on
Judiciary and Labor
Sen. David Y. Ige, Chair,
and Members of Committee on
Ways and Means
The Senate
The Twenty-Sixth State Legislature
State Capitol
Honolulu, Hawaii 96813

Dear Chair Hee, Chair Ige and Members:

Subject: JDL/WAM Committee – April 3, 2012 at 10:30 a.m. HST
House Bill No. 1671 HD2 SD1 - Relating to Procurement

Thank you for the opportunity to provide comments on H.B. No. 1671 HD2, SD1. The Department of Budget & Fiscal Services (BFS) of the City & County of Honolulu requests the following amendments to the bill:

Amend SECTION 3 subparagraph (c) from twenty business days to thirty business days. Thirty business days will allow the protested government agency to conduct a comprehensive review of the protest. Depending on the protest, this review could include investigating numerous issues, consulting with legal counsel, consulting with other parties, receiving determinations from licensing agencies and receiving determinations from federal agencies. A twenty business day deadline may lead to increased requests for DCCA appeals because the government agency's initial review and the resulting determination were rushed to meet the deadline.

Amend SECTION 4 subparagraph (d) to provide clarification on the definition of "estimated damage." The bill's current language is unclear on how "estimated damage" is to be calculated and may cause additional delays as the issue is argued during the DCCA appeal process.

Amend SECTION 4 subparagraph (e) to cover situations where the protesting party does not prevail and the protest is regarding a county's solicitation. Amend the bill to state when the protest is regarding a county solicitation, the protest bond will be divided between the DCCA and the affected county agency. This amendment will allow the counties to be reimbursed for the resources and time expensed in defending against the protest. Currently, the City receives no relief since the protest bond is deposited into the general fund of the State of Hawaii.

The City's proposed amendments to H.B. No. 1671 HD2 SD1 are attached and are in red font. Thank you for the opportunity to testify.

SECTION 3

(c) If the protest is not resolved by mutual agreement, the chief procurement officer or a designee shall [~~promptly~~] issue a decision in writing to uphold or deny the protest[-] no later than thirty business days after receipt of the protest ,unless a longer period is determined necessary. The decision shall:

SECTION 4

(d) Any bidder, offeror, contractor, or person that is a party to a protest of a solicitation or award of a contract under section 103D-302 or 103D-303 that is decided pursuant to section 103D-701 may initiate a proceeding under subsection (c); provided that:

- (1) For contracts with an estimated value of less than \$1,000,000, the protest shall concern a matter with estimated damage greater than \$10,000; and
- (2) For contracts with an estimated value of \$1,000,000 or more, the protest shall concern a matter with estimated damage that is equal to no less than ten per cent of the estimated value of the contract.

(3) For the purpose of this section, "estimated damage" means the difference between the protestor's bid amount and the amount of the apparent low responsible and responsive bid under section 103D-302 or the bid amount of the responsible offeror whose proposal is determined in writing to be the most advantageous under section 103D-303, as applicable.

(e) The party initiating a proceeding under subsection (d) shall pay to the department of commerce and consumer affairs a cash or protest bond in the amount of:

- (1) \$1,000 for a contract with an estimated value of less than \$500,000;
- (2) \$2,000 for a contract with an estimated value of at least \$500,000, but less than \$1,000,000; or
- (3) One-half per cent of the estimated value of the contract or not more than \$10,000, whichever is less, if the estimated value of the contract is \$1,000,000 or more.

If the initiating party prevails in the proceeding initiated under subsection (d), the cash or protest bond shall be returned to that party. If the initiating party does not prevail in the proceeding initiated under subsection (d), the cash or protest bond shall be deposited into the general fund. In the case of a county procurement, 50% of the protest bond shall be deposited into the general fund of the department of commerce and consumer affairs and the remaining 50% shall be deposited into the general fund of the affected county agency.



Testimony to Senate Committees on Judiciary and Labor and Ways and Means

Tuesday, April 3, 2012

10:30 a.m.

Capitol Room 016

RE: H.B. 1671 HD2 SD1, Relating to Procurement

Dear Chairs Hee and Ige, Vice-Chairs Shimabukuro and Kidani, and members of the Committees:

My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, BIA-Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii **strongly supports** H.B. 1671 HD2 SD1, relating to procurement, which proposes to impose time limits on rendering administrative and judicial review decisions; limit protests to those that are a minimum percentage of the contract value; requires posting of a protest bond to be forfeited if the protesting party does not prevail; and clarifies use of the terms "chief procurement officer" and "procurement officer" in the procurement code.

H.B. 1671 HD2 SD1 revives elements of Act 175 (2009) that were intended to expedite the procurement process for construction projects funded by the American Reinvestment and Recovery Act, but sunset on July 1, 2011. In addition, the bill greatly simplifies the current bid protest appeal process. It eliminates the extensive *de novo* review done currently for bid protest appeals heard by hearings officers from the Department of Commerce and Consumer Affairs (DCCA) Office of Administrative Hearings (OAH). In its place is a process that limits the OAH review to the evidence and issues raised in the proceedings before the procuring agency and the record of procuring agency's decision on a bid protest.

The intent of the bill is to discourage *de minimus* and frivolous bid protests and simplify and expedite the procurement appeal process. The bill recognizes the procuring agency's experience and expertise in the procurement process, while preserving the limited right of review of a procuring agency's decision to the DCCA OAH.

BIA-Hawaii **strongly supports** H.B. 1671 HD2 SD1.

Thank you for the opportunity to share with you our views.



Testimony of Maurice Morita
Assistant Director
Hawaii LECET
1617 Palama Street
Honolulu, HI 96817

SENATE COMMITTEE ON WAYS AND MEANS
Tuesday, April 3, 2012
10:30 a.m., Conference Room 016

HB 1671, HD2, SD1 - RELATING TO PROCUREMENT

Aloha Chairs Hee & Ige, Vice Chairs Shimabukuro, & Kidani, and Members of the Committee:

My name is Maurice Morita and I am the assistant director of Hawaii LECET (Laborers-Employers Cooperation and Education Trust). Hawaii LECET is a partnership between the Hawaii Laborers' Union, Local 368 and our union contractors.

The Hawaii LECET **strongly supports** HB 1671, HD2, SD1, which imposes time limits on rendering administrative and judicial review decisions. It limits protests to those that are a minimum percentage of the contract value. It requires posting of a protest bond, to be forfeited if the protesting party does not prevail.

The Hawaii LECET feels HB 1671, HD2, SD1 revives the elements of Act 175, SLH 2009, that were intended to expedite the procurement process for construction projects funded by the American Reinvestment and Recovery Act, but sunset on July 1, 2011. In addition, the bill simplifies the current bid protest appeal process.

Thank you for the opportunity to submit this testimony.