

HB 1671, HD2

RELATING TO PROCUREMENT

Imposes time limits on rendering administrative and judicial review decisions. Limits 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. Effective July 1, 2012.



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TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
SENATE COMMITTEE
ON
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND
MILITARY AFFAIRS

March 13, 2012

2:50 P.M.

HB 1671, HD2

RELATING TO PROCUREMENT.

Chair Espero, Vice-Chair Kidani and committee members, thank you for the opportunity to testify on HB1671, HD2. This bill includes requiring the State Procurement Office (SPO) to maintain protest statistics, amends section 103D-701 on protest setting time limits for the chief procurement officer (CPO) or designee to resolve a protest within 10 business days, and amends section 103D-709 on administrative proceedings providing procedures and setting time limits for the hearings officer.

SECTION 2 amends section 103D-701 on protest processes requiring the CPO or designee to resolve a protest within 10-business days, and issuance of a decision within 20-business days. On a simple procurement, this time limitation may be feasible, however, for complex procurements such as for IT or construction projects, this limitation is not feasible. Upon receipt of a protest, the agency reviews the matter, which may include researching to confirm the facts of the issues or gathering the evaluation committee to review the issues. A time limitation would frustrate the review process for a timely, accurate and factual response to the protestor. If the record of the protest requires evidence of oral testimony and other formal statements, the time provided will be insufficient.

SECTION 3 amends section 103D-709 on the Office of Administrative Hearing review proceedings.

The SPO opposes SECTIONS 2 and 3 and supports the attached amended language as a replacement for these sections. Thank you.

HB 1671, HD2
Senate Committee on Public Safety, Government Operations,
and Military Affairs
March 13, 2012
Page 1 of Attachment

ATTACHMENT

SECTION 2. Section 103D-701, Hawaii Revised Statutes, is amended to read as follows:

§103D-701 Authority to resolve protested solicitations and awards. (a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the ~~chief~~ procurement officer ~~[or a designee]~~ as specified in the solicitation.

Except as provided in sections 103D-303 and 103D-304, a protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest of an award or proposed award shall in any event be submitted in writing within five working days after the posting of award of the contract under section 103D-302 or 103D-303, if no request for debriefing has been made, as applicable; provided further that no protest based upon the content of the solicitation shall be considered unless it is submitted in writing prior to the date set for the receipt of offers.

ATTACHMENT

(b) The [~~chief~~] procurement officer [~~or a designee~~], prior to the commencement of an administrative proceeding under section 103D-709 or an action in court pursuant to section 103D-710, may settle and resolve a protest concerning the solicitation or award of a contract. This authority shall be exercised in accordance with rules adopted by the policy board.

(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. The decision shall:

- (1) State the reasons for the action taken; and
- (2) Inform the protestor of the protestor's right to an administrative proceeding as provided in this part, if applicable.

(d) A copy of the decision under subsection (c) shall be mailed or otherwise furnished immediately to the protestor and any other party intervening.

(e) A decision under subsection (c) shall be final and conclusive, unless any person adversely affected by the decision commences an administrative proceeding under section 103D-709.

ATTACHMENT

(f) In the event of a timely protest under subsection (a), no further action shall be taken on the solicitation or the award of the contract until the chief procurement officer makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the State. A decision under this subsection shall be final, conclusive, and not subject to appeal.

(g) In addition to any other relief, when a protest is sustained and the protestor should have been awarded the contract under the solicitation but is not, then the protestor shall be entitled to the actual costs reasonably incurred in connection with the solicitation, including bid or proposal preparation costs but not attorney's fees."

SECTION 3. Section 103D-709, Hawaii Revised Statutes, is amended to read as follows:

§103D-709 Administrative proceedings for review. (a) The several hearings officers appointed by the director of the department of commerce and consumer affairs pursuant to section 26-9(f) shall have jurisdiction to review and determine de novo, any request from any bidder, offeror, contractor, or person

ATTACHMENT

aggrieved under section 103D-106, or governmental body aggrieved by a determination of the chief procurement officer~~[, head of a purchasing agency,]~~ or a designee ~~[of either officer]~~ under section 103D-310, 103D-701, or 103D-702.

(b) Hearings to review and determine any request made pursuant to subsection (a) shall commence within twenty-one calendar days of receipt of the request. The hearings officers shall have power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue a written decision [which] not later than forty-five days from the receipt of the request under subsection (a), unless a longer period is deemed necessary for a specific administrative review by the respective hearings officer, that shall be final and conclusive unless a person or governmental body adversely affected by the decision commences an appeal in the circuit court of the circuit where the case or controversy arises under section 103D-710.

ATTACHMENT

(c) Only parties to the protest made and decided pursuant to sections 103D-701, 103D-709(a), 103D-310(b), and 103D-702(g) may initiate a proceeding under this section. The party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. All parties to the proceeding shall be afforded an opportunity to present oral or documentary evidence, conduct cross-examination as may be required, and argument on all issues involved. ~~[The rules of evidence shall apply.]~~ Fact finding under section 91-10 shall apply.

(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 this section; provided that:

- (1) For contracts with an estimated value of less than \$1,000,000, the protest concerns a matter that is greater than \$10,000; or

ATTACHMENT

(2) For contracts with an estimated value of \$1,000,000 or more, the protest concerns a matter that is equal to no less than ten per cent of the estimated value of the contract.

(e) The party initiating a proceeding falling within 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 \$500,000 or more, but less than \$1,000,000; or

(3) One-half per cent of the estimated value of the contract if the estimated value of the contract is \$1,000,000 or more; provided that in no event shall the required amount of the cash or protest bond be more than \$10,000.

If the initiating party prevails in the administrative proceeding, the cash or protest bond shall be returned to that party. If the initiating party does not prevail in the administrative proceeding, the cash or protest bond shall be deposited into the general fund.

ATTACHMENT

~~[(d)]~~ (f) The hearings officers shall ensure that a record of each proceeding which includes the following is compiled:

- (1) All pleadings, motions, intermediate rulings;
- (2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed;
- (3) Offers of proof and rulings thereon;
- (4) Proposed findings of fact;
- (5) A recording of the proceeding which may be transcribed if judicial review of the written decision is sought under section 103D-710.

~~[(e)]~~ (g) No action shall be taken on a solicitation or an award of a contract while a proceeding is pending, if the procurement was previously stayed under section 103D-701(f).

~~[(f)]~~ (h) The hearings officer shall decide whether the determinations of the chief procurement officer or the chief procurement officer's designee were in accordance with the Constitution, statutes, rules, and the terms and conditions of the solicitation or contract, and shall order such relief as may be appropriate in accordance with this chapter.

ATTACHMENT

~~[(e)]~~ (i) The policy board shall adopt such other rules as may be necessary to ensure that the proceedings conducted pursuant to this section afford all parties an opportunity to be heard.

(j) As used in this section, "estimated value of the contract" or "estimated value", with respect to a contract, means the governmental body's estimate of the price of the contract intended to result from the challenged solicitation, lowest 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.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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KEALI'I S. LOPEZ
DIRECTOR

TO THE SENATE COMMITTEE ON PUBLIC SAFETY,
GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS
TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

Date: Tuesday, March 13, 2012

Time: 2:50 p.m.

Conference Room: 224

**TESTIMONY FOR HEARING ON HB 1671, HD2
RELATING TO PROCUREMENT**

TO THE HONORABLE WILL ESPERO, CHAIR, AND THE HONORABLE MICHELLE
N. KIDANI, VICE-CHAIR, AND MEMBERS OF THE COMMITTEE

The Office of Administrative Hearings ("OAH") of the Department of Commerce and Consumer Affairs ("DCCA") appreciates the opportunity to offer comments for the Committee's Hearing on HB 1671, HD 2, relating to Procurement. My name is David Karlen, and I am the Senior Hearings Officer of the OAH.

1. OAH urges this committee to consider the proposed H.D.1 to H.B. 1671.

HB 1671, HD2, is intended to simplify and expedite the procurement appeals process by, among other things, limiting the scope of the hearings officer's review to

evidence and issues raised in the proceedings before the procuring agency. This Committee previously heard a similar measure, SB 2457, and passed out a Senate Draft 1 that OAH opposed. The Senate Committee on Judiciary and Labor subsequently added additional provisions imported from House Draft 1 of HB 1671 that OAH supported to ultimately pass out SB 2457, SD 2. Currently, S.B. 2457, S.D.2, is very similar to HB 1671, HD2. In comparing the various forms of both bills, OAH strongly prefers proposed House Draft 1 of House Bill 1671 to either HB 1671, HD 2, or S.B. 2457, S.D.2, and urges this committee to favorably consider the language of House Draft 1 in lieu of the current language of this bill. A copy of the House Draft 1 is attached for the Committee's consideration.

Regarding the specific provisions in HB 1671, HD 2, that are of concern to OAH:

Section 2: The Department supports timely processing of procurement protests including the placement of reasonable time limits on the completion of agency review. The Department does not support the language on page 2 lines 8-11 to the extent it creates a record of protest that would supplant de novo review or otherwise limit the scope of review.

Section 3. This section revises Haw. Rev. Stat. section 103D-709. This is the section of the procurement code that sets forth the standards of review in a procurement matter. Unlike House Draft 1 of House Bill 1671, House Draft 2 creates two different procurement tracks. The first "track" would maintain the status quo for reviews under section 103D-106, 103D-310 and 103D-702. The second "track" creates a new procurement review process for protests under 103D-701. This two-track process is problematic because it will add confusion, complexity and delay to a time-

sensitive process, and because the new procurement review process would preclude the hearings officer from conducting *de novo* reviews.

OAH is particularly concerned about the language on pages 5 and 6 of the bill that unnecessarily limits the record reviewed by the hearings officer and requires a ruling no later than thirty days from the filing of the application for review instead of 45 days after the receipt of the request.

2. The Existing De Novo Review Process Should Not Be Changed - De Novo Review Enhances the Integrity of the Procurement Process and Public Confidence in that Process

Hawaii's Procurement Code was based on the American Bar Association's Model Procurement Code for State and Local Governments. The 1993 Procurement Code established that procurement protests would be decided on a *de novo* basis. The most recent version of the American Bar Association's Model Procurement Code was published in 2000 and retains *de novo* review. This Model Procurement Code establishes the standard for "best practices."

De novo review means, in essence, that the hearings officer's decision is based on the matters originally presented by the protester to the agency, without being subject to the decision of the agency official who made the initial evaluation of the protest. It enhances public confidence in the procurement system by eliminating any perception that an agency official with a presumably vested interest in upholding the decisions of his or her agency as to the choice of contractors does not have an inordinate influence on the protest. **It does not mean new issues can be raised before the OAH.** The law has always been, as stated in many OAH decisions that are publicly available on-

line, that only issues previously raised in the initial protest to the agency can later be raised before the OAH.

HB 1671, HD 2, mandates an unworkable procedure that will lead to substantial delays at the agency level before a procurement protest is ever filed with OAH and inadequate time to review an agency decision.

The bill requires the procuring agency to prepare "a record of the protest proceedings" but there will be no confidence that such an in-house review creates an accountable, transparent procurement process free of bias or undue favoritism. Also, if the agency's record includes interviews and witness statements, some agencies are not equipped to take and preserve oral testimony as well as to prepare a comprehensive procurement investigative report.

To make matters worse, the current proposed legislation imposes an absolute time limit of thirty (30) days on the OAH. Yet it gives the agency ten (10) days to file the administrative record, with no stated penalties for noncompliance. It is thus in the agency's interest to be late and use up the full ten days, or even more, because failure to conclude the entire OAH proceeding in thirty days automatically means the agency's decision is upheld.

In the remaining twenty days, even assuming the agency timely files the record, the OAH hearings officer is supposed to receive briefs, hear oral argument, take new evidence where appropriate, and issue a written decision that explains the basis for a decision no matter which party prevails. This is totally unrealistic if the case is at all complicated and will lead to further erosion in public confidence in the viability of the procurement protest process.

3. Revival of Act 175 is a Positive Step to Streamline Procurement

Protests

The latter portion of HB 1671, HD 2, starting at the middle of page 6, is strongly supported by OAH. It should be improved by adding a 45 day time limit as was contained in Act 175 and House Draft 1 of the measure currently before the Committee. Act 175 responsibly streamlined the procurement protest process that proved to be workable in practice from July of 2009 to June of 2011. Its revival creates minimum threshold amounts for protests in order to discourage minor complaints. It also requires protestors to file a bond, thus eliminating protests meant merely to delay matters without any hope of success. Revival of Act 175 was proposed by the State Procurement Office (SPO). The SPO surveyed a large group of stakeholders involved in procurement and circulated two drafts before making its final proposal through the original version of HB 1671. The OAH was consulted during this process and supported the SPO's comprehensive efforts that culminated in HB 1671. The draft was further refined in the form of HB 1671, HD1, that is attached.

OAH strongly urges this committee to favorably consider the attached draft in lieu of the bill in its current form.

Thank you for the opportunity for OAH to provide its comments on this proposed legislation.

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

H.B. NO. 1671
H.D. 1

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§103D- Procurement statistics. The state procurement office shall keep statistics on solicitations and awards protested under section 103D-701 for the purpose of improving procurement procedures. The statistics shall include information on protests involving inadvertent errors and amounts forfeited from procurement protests."

SECTION 2. Section 103D-709, Hawaii Revised Statutes, is amended to read as follows:

"§103D-709 Administrative proceedings for review. (a) The several hearings officers appointed by the director of the department of commerce and consumer affairs pursuant to section 26-9(f) shall have jurisdiction to review and determine de novo, any request from any bidder, offeror, contractor, or person aggrieved under section 103D-106, or governmental body aggrieved by a determination of the chief procurement officer, head of a purchasing agency, or a designee of either officer under section 103D-310, 103D-701, or 103D-702.

(b) Hearings to review and determine any request made pursuant

to subsection (a) shall commence within twenty-one calendar days of receipt of the request. The hearings officers shall have power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue a written decision which shall be final and conclusive unless a person or governmental body adversely affected by the decision commences an appeal in the circuit court of the circuit where the case or controversy arises under section 103D-710. Hearings officers shall issue written decisions not later than forty-five days from the receipt of the request under subsection (a).

(c) Only parties to the protest made and decided pursuant to sections 103D-701, 103D-709(a), 103D-310(b), and [†]103D-702(g) [†] may initiate a proceeding under this section. The party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. All parties to the proceeding shall be afforded an opportunity to present oral or documentary evidence, conduct cross-examination as may be required, and argument on all issues involved. [~~The rules of evidence shall apply.~~] Fact finding under section 91-10 shall apply.

(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 this section; provided that:

- (1) For contracts with an estimated value of less than \$1,000,000, the protest shall concern a matter that is greater than \$10,000; and
- (2) For contracts with an estimated value of \$1,000,000 or more, the protest shall concern a matter that is equal to

no less than ten per cent of the estimated value of the contract.

(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.

~~(d)~~ (f) The hearings officers shall ensure that a record of each proceeding which includes the following is compiled:

- (1) All pleadings, motions, intermediate rulings;
- (2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed;
- (3) Offers of proof and rulings thereon;
- (4) Proposed findings of fact;
- (5) A recording of the proceeding which may be transcribed if judicial review of the written decision is sought under section 103D-710.

~~(e)~~ (g) No action shall be taken on a solicitation or an award of a contract while a proceeding is pending, if the procurement

was previously stayed under section 103D-701(f).

~~(f)~~ (h) The hearings officer shall decide whether the determinations of the chief procurement officer or the chief procurement officer's designee were in accordance with the Constitution, statutes, rules, and the terms and conditions of the solicitation or contract, and shall order such relief as may be appropriate in accordance with this chapter.

~~(g)~~ (i) The policy board shall adopt such other rules as may be necessary to ensure that the proceedings conducted pursuant to this section afford all parties an opportunity to be heard.

(j) As used in this section, "estimated value of the contract" or "estimated value", with respect to a contract, means either the amount of the lowest 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."

SECTION 3. Section 103D-710, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

"(c) Within ~~twenty~~ ten calendar days of the filing of an application for judicial review, the hearings officer shall transmit the record of the administrative proceedings to the circuit court of the circuit where the case or controversy arises."

2. By amending subsection (e) to read:

"(e) ~~Upon~~ No later than thirty days from the filing of the application for judicial review, based upon review of the record the circuit court may affirm the decision of the hearings officer issued pursuant to section 103D-709 or remand the case with instructions for

further proceedings; or it may reverse or modify the decision and order if substantial rights may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority or jurisdiction of the chief procurement officer or head of the purchasing agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion
[-];

provided that if an application for judicial review is not resolved on or before the thirtieth day from the filing of the application, the circuit court shall lose jurisdiction and the decision of the hearings officer shall not be disturbed. All time limitations on actions, as provided for in section 103D-712, shall remain in effect."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2112.

Report Title:

Procurement Code; Protest; Administrative Proceedings

Description:

Imposes time limits on rendering administrative and judicial review decisions; limits 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. Effective July 1, 2112. (HB1671 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

NEIL ABERCROMBIE
GOVERNOR



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IN REPLY REFER TO:

March 13, 2012

**H.B. 1671, H.D. 2
RELATING TO PROCUREMENT**

**SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS &
MILITARY AFFAIRS**

The Department of Transportation (DOT) supports HB 1671, HD2. The bill requires the party filing for an administrative hearing to post a protest bond. This will discourage parties from filing for an administrative hearing with less than convincing evidence, thus eliminating unnecessary halts to the contract process. HB 1671, HD2 will ensure contracts to be executed in a timely manner.

Thank you for the opportunity to provide testimony.



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

Sen. Will Espero, Chair,
Sen. Michelle N. Kidani, Vice Chair,
and Members of Committee on
Public Safety, Government Operations,
and Military Affairs
The Senate
The Twenty-Sixth State Legislature
State Capitol
Honolulu, Hawaii 96813

Dear Chair Espero, Vice Chair Kidani and Members:

Subject: PGM Committee – March 13, 2012 at 2:50 p.m. HST
House Bill No. 1671 H.D. 2 - Relating to Procurement

Thank you for the opportunity to testify on H.B. No. 1671 H.D. 2. The City & County of Honolulu supports H.B. No. 1671 H.D. 2. However, the City requests the following amendments to the bill:

Amend SECTION 2 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 that fore mentioned deadline.

Amend SECTION 3 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 H.D. 2 are attached and are in red font. Thank you for the opportunity to testify.

SECTION 2

(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. The decision shall:

SECTION 3

(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's 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.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 13, 2012

TO: HONORABLE SENATORS WILL ESPERO, CHAIR, MICHELLE KIDANI,
VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON PUBLIC
SAFETY, GOVERNMENT OPERATIONS

SUBJECT: **STRONG SUPPORT OF H.B. 1671, HD2, RELATING TO
PROCUREMENT.** Imposes time limits on rendering administrative and judicial
review decisions; limits 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. Effective 07/01/50. (SD2)

HEARING

DATE: March 13, 2012
TIME: 2:50 p.m.
PLACE: Conference Room 224

Dear Chair Espero, Vice Chair Kidani and Members of the Committee:

The General Contractors Association (GCA) is an organization comprised of over six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is celebrating its 80th anniversary this year; GCA remains the largest construction association in the State of Hawaii whose mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest. GCA is submitting testimony in **strong support** of H.B. 1671, HD2, Relating to Procurement.

H.B. 1671, HD2 revives Act 175 (2009), which was originally passed to strategically implement projects that were funded by the American Reinvestment and Recovery Act, and sunset on July 1, 2011. This bill will revive elements of Act 175 (2009) that benefit the procurement process and will make the process more efficient. The bill will implement, among other things, the following: (1) require the State Procurement Office to keep statistics on the request on all bids and awards and all protests filed as well as any additional cost to the state resulting from said protests; (2) provide for time limits on the rendering of decisions by hearing officers; and (3) requires the posting of bonds to initiate protests for contracts tied to the total value of the contract awarded.

Section three of this measure amends Section 103D-709, Hawaii Revised Statute and proposes to simplify and expedite the procurement appeal process by recognizing the procuring agency's experience and expertise in the procurement process. This section preserves the right of review of a procuring agency's decision to the Department of Commerce and Consumer Affairs (DCCA) Office of Administrative Hearings (OAH), while amending an officer's standard of review in a bid protest under section 103D-701, HRS, by removing *de novo* review.

GCA believes this bill will address the main concerns with the bid protests which remain problematic and have stalled the startup and completion of public works projects meant to help stimulate the economy.

The GCA agrees with the need to keep statistics on protests lodged and the cost of such protests as well as delays in construction resulting from such protest. Such statistics will help the state to determine the total cost of construction contract protest and the delays caused by these protests and develop procedures to eliminate the cause of bid protests. The GCA also supports the provision that would require the posting to a protest bond to initiate a protest proceeding to insure that only serious protest are lodged to reduce the number of protest. The provision to set time limits on the filing for judicial review of a hearing officer's decision should also help to speed up the final award of contracts.

This session the legislature introduced numerous measures to increase funding for construction projects to aid in the recovery of Hawaii's economy; these projects will require swift and efficient contracts by the state. This bill will help to insure that the procurement process is as efficient as possible. All in all, this bill will protect the procurement process; curb problematic decisions by the OAH; and most importantly save taxpayers money.

The GCA supports the passage of H.B. 1671, HD2 and recommends that the committee pass this measure.

Thank you for the opportunity to provide our views on this measure.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 12, 2012 6:13 AM
To: PGM Testimony
Cc: gnohara@genbahawaii.com
Subject: Testimony for HB1671 on 3/13/2012 2:50:00 PM

Testimony for PGM 3/13/2012 2:50:00 PM HB1671

Conference room: 224
Testifier position: Support
Testifier will be present: No
Submitted by: Glenn Nohara
Organization: Genba Hawaii, Inc.
E-mail: gnohara@genbahawaii.com
Submitted on: 3/12/2012

Comments:

Dear Chair Espero, Vice Chair Kidani and Members of the Committee:

Genba Hawaii, Inc. strongly supports H.B. 1671, HD2 Relating to Procurement.

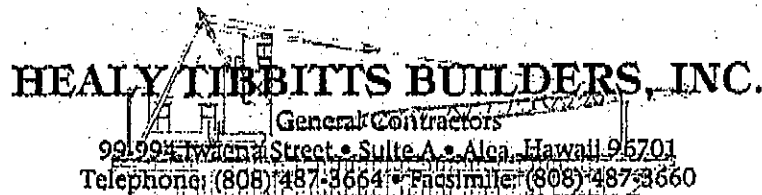
H.B. 1671, HD2 revives elements of Act 175 (2009) that were intended to expedite the procurement process for construction projects funded by the American Reinvestment and Recovery Act, but sunset on July 1, 2011. In addition, the bill greatly simplifies the current bid protest appeal process. It eliminates 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.

For the above mentioned reasons, Genba Hawaii, Inc. is in strong support of H.B. 1671, HD2 and respectfully requests this Committee to pass this measure.

Thank you for the opportunity to provide our views on this measure.

Sincerely,
Glenn Nohara
President



Via E-mail: PGMTestimony@capitol.hawaii.gov
 Facsimile: (808) 586-6361

March 13, 2012

TO: HONORABLE SENATORS WILL ESPERO, CHAIR, MICHELLE KIDANI, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS

SUBJECT: STRONG SUPPORT OF H.B. 1671, HD2. Imposes time limits on rendering administrative and judicial review decisions. Limits 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. Effective July 1, 2012. (HB1671 HD2)

HEARING

DATE: Tuesday, March 13, 2012
TIME: 2:50 p.m.
PLACE: Conference Room 224

Dear Chair Espero, Vice Chair Kidani and Members of the Committee:

Healy Tibbltts Builders, Inc. strongly supports H.B. 1671, HD2 Relating to Procurement.

H.B. 1671, HD2 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.

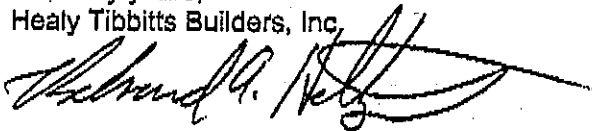
The intent of the bill is to discourage *de minimus* and frivolous bid protests and simplify and expedite the procurement appeal process. The bill recognizes the procuring agency's experience and expertise in the procurement process, while preserving the limited right of review of a procuring agency's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

Honorable Clayton Hee, Chair
Committee on Judiciary and Labor
February 24, 2012
Page 2 of 2

For the above mentioned reasons, Healy Tibbitts Builders, Inc. is in strong support of H.B. 1671, HD2 and respectfully requests this Committee to pass this measure.

Thank you for the opportunity to provide our views on this measure.

Very truly yours,
Healy Tibbitts Builders, Inc.



Richard A. Heltzel
President

The Pacific Resource
PARTNERSHIP



Testimony of C. Mike Kido
External Affairs
The Pacific Resource Partnership

Senate Committee on Public Safety, Government Operations, and Military Affairs
Senator Will Espero, Chair
Senator Michelle Kidani, Vice Chair

HB 1671, HD2 – Relating to Procurement
Tuesday, March 13, 2012
2:50 p.m.
Conference Room 224

Dear Chair Espero, Vice Chair Kidani and Members of the Committee:

My name is C. Mike Kido, External Affairs of the Pacific Resource Partnership (PRP), a labor-management consortium representing over 240 signatory contractors and the Hawaii Regional Council of Carpenters (formerly the Hawaii Carpenters Union).

PRP **supports** H.B. 1671, HD2 Relating to Procurement which 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.

Thank you for the opportunity to share our views with you and we respectfully ask for your **support** of H.B. 1671, HD2.

Leonard K.P. Leong
Vice President

Via E-mail: PGMTestimony@capitol.hawaii.gov
Facsimile: (808) 586-6361

March 13, 2012

TO: HONORABLE SENATORS WILL ESPERO, CHAIR, MICHELLE KIDANI,
VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON
PUBLIC SAFETY, GOVERNMENT OPERATIONS

SUBJECT: **STRONG SUPPORT OF H.B. 1671, HD2.** Imposes time limits on rendering
administrative and judicial review decisions. Limits 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.
Effective July 1, 2012. (HB1671 HD2)



HEARING

DATE: Tuesday, March 13, 2012
TIME: 2:50 p.m.
PLACE: Conference Room 224

Dear Chair Espero, Vice Chair Kidani and Members of the Committee:

Royal Contracting Co., Ltd. strongly supports H.B. 1671, HD2 Relating to Procurement.

H.B. 1671, HD2 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.

For the above mentioned reasons, **Royal Contracting Co., Ltd.** is in **strong support** of H.B. 1671, HD2 and respectfully requests this Committee to pass this measure.

Thank you for the opportunity to provide our views on this measure.



RALPH S. INOUYE CO LTD
GENERAL CONTRACTOR

2831 Awaawaloa Street
Honolulu, Hawaii 96819

T: 808.839.9002
F: 808.833.5971

License No. ABC-457
Founded In 1962

Via E-mail: PGMTestimony@capitol.hawaii.gov
Facsimile: (808) 586-6361

March 13, 2012

TO: HONORABLE SENATORS WILL ESPERO, CHAIR, MICHELLE KIDANI,
VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON
PUBLIC SAFETY, GOVERNMENT OPERATIONS

SUBJECT: **STRONG SUPPORT OF H.B. 1671, HD2, RELATING TO PROCUREMENT.**
Imposes time limits on rendering administrative and judicial review
decisions. Limits 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. Effective July 1, 2012. (HB1671 HD2)

HEARING

DATE: Tuesday, March 13, 2012
TIME: 2:50 p.m.
PLACE: Conference Room 224

Dear Chair Espero, Vice Chair Kidani and Members of the Committee:

My name is Lance Inouye and I am President of Ralph S. Inouye Co., Ltd. (RSI),
General Contractor and a member of the General Contractors Association of Hawaii
(GCA). RSI **strongly supports** H.B. 1671, HD2 Relating to Procurement.

H.B. 1671, HD2 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.

For the above mentioned reasons, RSI is in **strong support** of H.B. 1671, HD2 and respectfully
requests this Committee to pass this measure.

Thank you for the opportunity to provide our views on this measure.



general contractor license #ABC 21576

Via E-mail: PGMTestimony@capitol.hawaii.gov
Facsimile: (808) 586-6361

March 12, 2012

TO: HONORABLE SENATORS WILL ESPERO, CHAIR, MICHELLE KIDANI, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS

SUBJECT: **STRONG SUPPORT OF H.B. 1671, HD2.** Imposes time limits on rendering administrative and judicial review decisions. Limits 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. Effective July 1, 2012. (HB1671 HD2)

HEARING

DATE: Tuesday, March 13, 2012
TIME: 2:50 p.m.
PLACE: Conference Room 224

Dear Chair Espero, Vice Chair Kidani and Members of the Committee:

LYZ, Inc. strongly supports H.B. 1671, HD2 Relating to Procurement.

H.B. 1671, HD2 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.

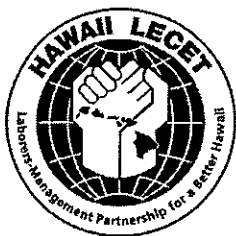
The intent of the bill is to discourage *de minimus* and frivolous bid protests and simplify and expedite the procurement appeal process. The bill recognizes the procuring agency's experience and expertise in the procurement process, while preserving the limited right of review of a procuring agency's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

For the above mentioned reasons, **LYZ, Inc.** is in strong support of H.B. 1671, HD2 and respectfully requests this Committee to pass this measure.

Thank you for the opportunity to provide our views on this measure.

A handwritten signature in black ink, appearing to read 'James N. Kurita', is written over a circular stamp or seal.

James N. Kurita
Vice President/ Chief Operating Officer



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

SENATE COMMITTEE ON PUBLIC SAFETY, & GOVERNMENT OPERATIONS
Tuesday, March 13, 2012
2:50 p.m., Conference Room 224

HB 1671, HD2 - RELATING TO PROCUREMENT

Aloha Chair Espero, Vice Chair 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, 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, 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.