

NEIL ABERCROMBIE  
GOVERNOR



## LATE TESTIMONY

AARON S. FUJIOKA  
ADMINISTRATOR

**STATE OF HAWAII**  
**STATE PROCUREMENT OFFICE**  
P.O. Box 119  
Honolulu, Hawaii 96810-0119  
Tel: (808) 587-4700 Fax: (808) 587-4703  
<http://hawaii.gov/spo>

TESTIMONY  
OF  
AARON S. FUJIOKA  
ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE  
HOUSE COMMITTEE  
ON  
ECONOMIC REVITALIZATION & BUSINESS

January 24, 2012

8:30 a.m.

HB 1671

RELATING TO PROCUREMENT.

Chair McKelvey, Vice-Chair Choy and committee members, thank you for the opportunity to testify on HB 1671. This bill would amend the protest process.

The SPO supports SECTION 2 with the attached changes in red. Which are: Subparagraph (a) amended for clarity and consistency on the responsible entity; subparagraph (b) amended to offer flexibility in time if appeal is complicated; and (j), deleted term 'bid' as not applicable to section 103D-303, competitive sealed proposal.

Thank you.

affected by the decision commences an appeal in the circuit court of the circuit where the case or controversy arises under section 103D-710.

(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
- (2) For contracts with an estimated value of \$1,000,000 or more, the protest concerns a matter that is equal to

- (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.

1065 Ahua Street  
Honolulu, HI 96819  
Phone: 808-833-1681 FAX: 839-4167  
Email: [info@gcahawaii.org](mailto:info@gcahawaii.org)  
Website: [www.gcahawaii.org](http://www.gcahawaii.org)



**GCA of Hawaii**

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

## **LATE TESTIMONY**

Uploaded via Capitol Website

January 24, 2012

**TO:** THE HONORABLE REPRESENTATIVES ANGUS MCKELVEY, CHAIR,  
ISAAC CHOY, VICE CHAIR AND MEMBERS OF THE COMMITTEE ON  
ECONOMIC REVITALIZATION & BUSINESS

**SUBJECT:** **SUPPORT OF H.B. 1671, 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.

### NOTICE OF HEARING

**DATE:** Tuesday, January 24, 2012  
**TIME:** 8:30 AM  
**PLACE:** Conference Room 312

Dear Chair McKelvey, Vice Chair Choy 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 80<sup>th</sup> anniversary this year; GCA remains the largest construction association in the State of Hawaii. GCA is submitting testimony **in support** of H.B. 1671, Relating to Contracts.

This bill would 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. The bill also provides for time limits on the rendering of decisions by hearing officers and requires the posting of bonds to initiate protests for contracts tied to the total value of the contract awarded.

The GCA agrees with the need to keep statistics on protested 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.

The legislature's proposal to increase the funding for capital improvement projects in the 2012-2013 fiscal years to aid in the recovery of Hawaii's economy will require the swift and efficient award contracts by the state. The proposals in H.B. 1671 should help to insure that the procurement process is as efficient as possible.

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

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