

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 AM

HB 1894

RELATING TO PROCUREMENT.

Chair McKelvey, Vice Chair Choy, and committee members, thank you for the opportunity to testify on HB 1894. This bill proposes a new section, limited to certain construction and design-build procurements, which proposes to allow the Governor or Mayors to determine applicability of exempting the requirements of the Hawaii Public Procurement Code (Code).

The Code was established to separate and remove the Governor and Mayors from any procurement decisions by placing the authority, responsibility and accountability with the designated chief procurement officers for the various state and county jurisdictions. This was done to assure the public and all interested parties that the awarding of government contracts is void of any perceived partisan involvement. To allow the Governor and Mayors to exempt procurement requirements may be viewed as a legal maneuver to circumvent the Code.

This bill would adversely impact vendors, contractors and service providers by eliminating due process to protest the outcome of award which may be due to faulty specifications and other requirements that may be biased, restrictive or preferential in nature. Protests also allow mistakes on the part of the governmental agency to be corrected.

The bill eliminates checks and balances, limits the ability of the chief procurement officers to take corrective action, and likely lead to misuse.

The State Procurement Office opposes this bill.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

LATE TESTIMONY

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January 24, 2012

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

SUBJECT: **COMMENTS REGARDING H.B. 1894, RELATING TO PROCUREMENT.**
Temporarily authorizes the governor or a county mayor to exempt a construction or design-build procurement from protest concerning the procurement and administrative review of a nonresponsible offeror determination.

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 80th anniversary; GCA remains the largest construction association in the State of Hawaii. GCA is submitting **comments** regarding H.B. 1894, Relating to Procurement.

GCA is in favor of intent of H.B. 1894, but has some concerns regarding the public release of all submissions on design-build proposals, which may include confidential proprietary information. The purpose of H.B. 1894 is to promote economic revitalization by authorizing the governor or county mayor to exempt construction or design-build procurement from protests for two years, while also implementing procedural measures to ensure transparency in the process.

Chapter 103D, known as the Procurement Code ("the Code") is important in ensuring fairness and efficiency in the procurement of goods and services, and construction for the State and County. However, the Code may sometimes have the opposite effect when trying to get projects started. This measure tries to address the timeliness issues that bid protests cause, mainly because bid protests result in costly delays in project implementation and most of all added cost to taxpayers. Therefore, although GCA supports the intent behind the proposed legislation, the non-confidentiality of all submissions, especially in certain procurements like design-build, it may discourage potential bidders.

The Committee should reconsider the release of any proprietary information which may be included in design-build proposals and not be suitable for public release.

Thank you for the opportunity to testify on this matter.



Hawaii Chapter

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LATE TESTIMONY

Committee on Economic Revitalization and Business
Chair Angus L.K. McKelvey
Vice Chair Issac W. Choy

RE: Testimony in **Opposition** to HB 1894

Chair McKelvey, Vice Chair Choy & Members of the Committee.

Thank you for the opportunity to testify on this bill. My name is Malcolm Barcarse, Jr. I am the 2012 Board Chair and Legislative Committee Chair for Associated Builders and Contractors Hawaii Chapter. We are an association of over 150 members representing Merit Shop Contractors in the State of Hawaii.

We recognize the need to jump start the construction industry in Hawaii and appreciate the State's efforts to streamline procurement for Capital Improvement Projects. However we should not undermine the integrity of the procurement process in the name of streamlining and we believe that HB 1894 does so and that is why we **oppose** it.

While the current system for protesting bids is flawed it exists to ensure that the State and Counties are getting a responsible contractor for its projects. Many protestable flaws that occur in the bidding process are discovered by competing contractors who are knowledgeable of the marketplace. Eliminating protests on a project will deprive the State and the Counties of the checks and balances necessary between the government and the Contracting Community to ensure that the procurement process is fair and provides a good value to the Government.

We believe that the procurement process can operate more efficiently through reform of the protest process to ensure frivolous claims are not being made. The ability to exempt a project from bid protests while potentially expediting the procurement may cost the State and the Counties in the long run if a non responsible bidder is awarded a contract wins a contract when the problem with its bid could have been discovered in the protest process.

Thank you for the opportunity to testify