

# SB 2074

## **RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE**

*Description:*

Amends section 103D-707, HRS, to permit an additional post-award remedy if the contract is not fully executed. Allows for rescission of the award and application of remedies provided for in section 103D-706, HRS.

NEIL ABERCROMBIE  
GOVERNOR



AARON S. FUJIOKA  
ADMINISTRATOR

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TESTIMONY  
OF  
AARON S. FUJIOKA  
ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE  
SENATE COMMITTEES  
ON  
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS  
AND  
JUDICIARY AND LABOR.

February 14, 2012

9:30 a.m.

SB 2074

RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE.

Chairs Espero and Hee, Vice Chairs Kidani and Shimabukuro and committee members, thank you for the opportunity to testify on SB 2074. This bill proposes to amend §103D-707, *Remedies after an award* to permit post award remedy when contract is not fully executed.

The State Procurement Office supports this bill.

Thank you.

NEIL ABERCROMBIE  
GOVERNOR



Dean H. Seki  
Acting Comptroller  
Jan S. Gouveia  
Deputy Comptroller

STATE OF HAWAII  
DEPARTMENT OF ACCOUNTING  
AND GENERAL SERVICES  
P.O. BOX 119  
HONOLULU, HAWAII 96810-0119

TESTIMONY  
OF  
DEAN H. SEKI, ACTING COMPTROLLER  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
TO THE  
SENATE COMMITTEES  
ON  
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS  
AND  
JUDICIARY AND LABOR  
ON  
February 14, 2012

S.B. 2074

RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE

Chair Espero, Chair Hee and members of the Committees, thank you for the opportunity to testify on S.B. 2074.

The Department of Accounting and General Services supports S.B. 2074 and offers the following amendments.

Amend paragraph (1)(C), page 2, lines 5 to 7 from "...reevaluaton and award of the contract to the next lowest responsive and responsible bidder or next ranked responsible offeror;" to "reevaluation and award of the contract to determine the lowest responsive and responsible offeror or ranking of the responsible offerors."

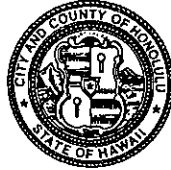
The same amendments are suggested for paragraph (2)(C), page 2, lines 20 to 22.

The reason for these recommended revisions is that the bill as currently written assumes that the original lowest responsive and responsible bidder or first ranked responsive and responsible offeror will be rejected and not considered in the reevaluation. This should not be the case when a bidder or offeror has not acted fraudulently or in bad faith. The other reason for these recommended revisions is that the revised language is more generic and we believe this improves the intent of this bill.

Thank you for the opportunity to submit testimony on this matter.

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PETER B. CARLISLE  
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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. Will Espero, Chair,  
and Members of Committee on  
Public Safety, Government Operations,  
and Military Affairs  
The Senate  
The Twenty-Fifth State Legislature  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Hee, Chair Espero, and Members:

Subject: PGM/JDL Joint Hearing - February 14, 2012 at 9:30 a.m. HST  
Senate Bill No. 2074 Relating to Hawaii Public Procurement Code.

Thank you for the opportunity to testify on Senate Bill No. 2074. The City & County of Honolulu strongly supports S.B. No. 2074 which amends section 103D-707, HRS, to permit an additional post-award remedy if the contract is not fully executed. This bill will allow for rescission of an award and application of remedies provided for in section 103D-706, HRS. The City strongly believes this bill will have a positive effect on the revitalization of Hawaii's economy.

The purpose of the bill is to address a time consuming and costly lack of clarity in the post-award remedy provisions of the Hawaii Public Procurement Code. Currently the procurement code is silent on whether government agencies are able to re-evaluate the remaining bids or proposals of a solicitation if the initial award is determined to be in violation of the procurement code. This void in the procurement code causes government agencies to complete a lengthy re-solicitation process even when the initial solicitation is compliant with the procurement code and acceptable bids or proposals are available.

This bill clarifies that the rescinding of an award and re-evaluation of remaining bids or proposals is an acceptable post-award remedy. This clarification will greatly reduce the administrative burdens of re-soliciting procurements, prevent damaging delays that otherwise may have reduced the effectiveness of project's economic benefit, and will promote fairness to bidders or offerors who submitted acceptable proposals in good faith.

The City & County of Honolulu strongly supports S.B. No. 2074 and thank you for the opportunity to testify.