

SB 2457

RELATING TO PROCUREMENT

Description:

Requires a hearing officer to affirm the decision of a procurement officer in protests filed under section 103D-701, HRS, unless the procurement officer's decision is shown by clear and convincing evidence to be arbitrary, capricious, fraudulent, or clearly erroneous.



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, February 14, 2012

Time: 3:15 p.m.

Conference Room: 224

**TESTIMONY FOR HEARING ON SB 2457
RELATING TO PROCUREMENT**

TO THE HONORABLE WILL ESPERO, CHAIR, & 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 SB 2457, relating to Procurement. My name is David Karlen, and I am the Senior Hearings Officer of the OAH.

The OAH has administered the hearings on procurement protests since the Legislature established the Procurement Code, Chapter 103D of the Hawaii Revised Statutes, in 1993. OAH and DCCA oppose SB 2457.

Hawaii's Procurement Code was based on the American Bar Association's Model Procurement Code for State and Local Governments. SB 2457 would enact two major procedural changes to the way procurement protests are conducted at the administrative level. The OAH does not believe that these changes would be of benefit to the administrative review process. Accordingly,

1. The existing de novo review process should not be changed

The 1993 Procurement Code established that procurement protests would be decided on a *de novo* basis. SB 2457 retains *de novo* review for determinations of bidder responsibility under Section 103D-310 and debarment and suspension proceedings under Section 103D-702. However, it eliminates *de novo* review for protests of solicitations and awards under Section 103D-701. OAH does not believe that this change is warranted.

De novo review means, in essence, that the procuring agency's decisions are based on the matters originally presented by the protester to the agency but without the influence of 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.

In 2000, seven years after the passage of the Procurement Code, the American Bar Association published the last updated version of its Model Procurement Code for State and Local Governments. This latest version retains the provision for *de novo*

administrative review that the Legislature originally adopted in 1993, and the OAH does not support any changes to that standard.

Testimony previously submitted to the House in favor of a companion bill, HB 2044, mistakenly claimed that the American Bar Association had changed its Model Procurement Code to eliminate *de novo* review. That was not, in fact, the case.

2. The burden of proof should not be elevated to an exceedingly high level

Under present law, the burden of proof on a party protesting a procurement is the “preponderance of the evidence” standard common to virtually all civil litigation. SB 2457 proposes to change that standard to one of “clear and convincing evidence.”

The “clear and convincing evidence” standard is found in civil litigation primarily when there are allegations of fraud. It imposes a higher burden of proof, and there has been no study or evidence presented to the OAH concerning the history of procurement protests since 1993 that impels adoption of such a higher burden of proof. In addition, the association of this burden of proof with cases of fraud would potentially taint procurement protests with connotations of allegations of fraudulent activity on the part of procurement officials. The OAH believes that injecting that type of connotation would not be helpful to anyone concerned.

3. SB 2457 should not be redrafted to add time limits contradictory to other pending legislation

Supporters of HB 2044, the companion bill to SB 2457, previously submitted testimony to the House in favor of adding time limits on the protest hearing that were supposedly consistent with Act 175 (SLH 2009) which sunset on June 30, 2011. The proposed time limits, however, were not consistent. They added a ten day period for

the agency to prepare a record for the protest, a time limit which from experience OAH predicts will impose an impossible burden on the agency in many cases. The proposal also limited the protest period to 30 days instead of the forty-five days provided in Act 175.

We would like to bring the Committee's attention to HB 1671 which revives Act 175. It has been approved by the House Committee on Economic Revitalization & Business and is now pending before the House Finance Committee. It responsibly streamlines the procurement protest process. This measure 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 HB 1671. The OAH was consulted during this process and supported the SPO's comprehensive efforts that culminated in HB 1671.

The present measure, in contrast, did not go through any such process. No evidence has been presented to the OAH concerning the need for the proposed changes or the experience of other jurisdictions with similar provisions.

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

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

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February 14, 2012

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

SUBJECT: **STRONG SUPPORT AND PROPOSED AMENDMENT TO S.B. 2457, RELATING TO PROCUREMENT.** Requires a hearing officer to affirm the decision of a procurement officer in protests filed under section 103D-701, HRS, unless the procurement officer's decision is shown by clear and convincing evidence to be arbitrary, capricious, fraudulent, or clearly erroneous.

HEARING

DATE: Tuesday, February 14, 2012

TIME: 3:15 PM

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. GCA is submitting **testimony in strong support and recommending an amendment to S.B. 2457, Relating to Procurement.**

S.B. 2457 proposes to limit a hearing officer's review of the procuring agency's decision in a bid protest under section 103D-701, HRS, by removing *de novo* review. Instead, unless the procurement officer's decision is shown by clear and convincing evidence to be arbitrary, capricious, fraudulent, or clearly erroneous, the decision shall stand.

GCA supports S.B. 2457, but would like to propose language to further its intent of simplifying and expediting the procurement appeal process. GCA's proposed SD1 amendment, attached, 1) generally limits the hearings officer's review to the record of the procuring agency's protest proceedings and the issues raised therein for evidence of decisions that may be arbitrary capricious, fraudulent, or clearly erroneous (see American Bar Association 2000 Model Procurement Code); and 2) provides the same time limits for the hearings officer to make the decision as those that were included for the Circuit Court in Act 175 (SLH 2009) which sunset as of July 1, 2011. The bill, as amended, recognizes the procuring agency's experience and expertise in the procurement process, while preserving the right of review of a procuring agency's decision to the Department of Commerce and Consumer Affairs (DCCA) Office of Administrative Hearings (OAH).

Honorable Will Espero, Chair
Committee on Public Safety, Government Operations and Military Affairs
February 14, 2012
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GCA's proposal balances the desire to expedite procurements delayed by constant protest appeals while preserving a right of review of a procuring agency's decision to the DCCA OAH.

For the above mentioned reasons, GCA is in **strong support** of S.B. 2457 and respectfully requests that this Committee adopt the proposed SD1 amendment attached.

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

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

SECTION 1. Section 103D-709, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(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:

(1) Review and determine de novo, any request from any bidder, offeror, contractor, 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 ~~7-103D-701,~~ or 103D-702, pursuant to subsection (b) below; and

(2) Review and determine any request from any bidder, offeror, contractor, person, 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-701, ~~provided that the determination of the chief~~

~~procurement officer, head of a purchasing agency, or a designee of either officer shall be affirmed unless there is clear and convincing evidence that the decision was arbitrary, capricious, fraudulent, or clearly erroneous."~~ pursuant to subsection (c) below;

2. By amending subsections (b), (c), and (d) to read:

"(b) Hearings to review and determine any request made pursuant to subsection (a) (1) shall be conducted as follows:

(1) Hearings 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 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-~~7~~;

(2) 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;

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

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

(4) 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.

~~(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. Hearings to review and determine any request made pursuant to subsection (a) (2) shall be conducted as follows:~~

- (1) Within ten calendar days of the filing of an application for review pursuant to subsection (a) (2), the chief procurement officer, head of a purchasing agency, or a designee of either officer shall transmit the record of the protest proceedings under section 103D-701 to the office of administrative hearings of the department of commerce and consumer affairs;
- (2) The review shall be scheduled as expeditiously as practicable. It shall be conducted on the record of the protest proceedings under section 103D-701, and briefs and oral argument. No new evidence, nor new issues not raised in the proceedings before the procuring agency, shall be introduced, except that the hearings officer appointed to hear the case may, if evidence is offered which is clearly newly discovered evidence and material to the just decision on appeal, admit the same; and

(3) Upon No later than thirty days from the filing of the application for administrative review, based upon review of the record, the appointed hearings officer shall affirm the decision of the purchasing agency, or it may either remand the case with instructions for further proceedings or reverse the decision but only if substantial rights may have been prejudiced because the findings, conclusions, decisions, or orders of the purchasing agency are found to be arbitrary, capricious, fraudulent, or clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; provided that if an application for review is not resolved by the thirtieth day from the filing of the application, the hearings officer shall lose jurisdiction and the decision of the purchasing agency shall not be disturbed. All time limitations on actions, as provided for in section 103D-712, shall remain in effect.

(d) ~~The hearing 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 facts;~~
~~(5) A recording of the proceeding which may be transcribed if judicial review of written decision is sought under section 103D-710. 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.~~

3. By amending subsection (f) to read:

~~"(f) 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 (deleted).~~

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

BULLET POINTS ON BILL CHANGES

- Intent of bill is to simplify and expedite the procurement appeal process by recognizing the procuring agency's experience and expertise in the procurement process, while preserving the right of review of a procuring agency's decision to the DCCA office of administrative hearings (OAH)
- Identical language in existing statutes and/or model codes were used as much as practicable
- The bill removes the power of *de novo* review from hearings officers of the OAH. Instead, the OAH review is generally limited to a review of the written record of procuring agency's protest proceedings for evidence of decisions that may be arbitrary, capricious, fraudulent, or clearly erroneous (words taken from the ABA 2000 Model Procurement Code)
- Words were added to limit OAH review to only those issues raised in the protest to the procuring agency, but permits the OAH to consider newly discovered evidence/material
- OAH time limits (but not the appeal bond provisions) from Act 175 (SLH 2009) were also added to further expedite the OAH proceedings and resolution. Although Act 175 sunset in July 2011, many bills are in the hopper to reinstate many of its provisions to expedite the procurement appeals process
- The HRS §103D-710 judicial (circuit court) review of the OAH determination remains intact.



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February 10, 2012

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

SUBJECT: **STRONG SUPPORT OF S.B. 2457, RELATING TO PROCUREMENT.**
Requires a hearing officer to affirm the decision of a procurement officer in protests filed under section 103D-701, HRS, unless the procurement officer's decision is shown by clear and convincing evidence to be arbitrary, capricious, fraudulent, or clearly erroneous.

HEARING

DATE: Tuesday, February 14, 2012
TIME: 3:15 PM
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** S.B. 2457, Relating to Procurement.

S.B. 2457 proposes to limit a hearing officer's review of the procuring agency's decision in a bid protest under section 103D-701, HRS, by removing *de novo* review. Instead, unless the procurement officer's decision is shown by clear and convincing evidence to be arbitrary, capricious, fraudulent, or clearly erroneous, the decision shall stand.

RSI supports S. B. 2457, and is also in support of any amendments to the bill that the General Contractors Association of Hawaii may propose. The intent of the bill is to simplify and expedite the procurement appeal process by recognizing the procuring agency's experience and expertise in the procurement process, while preserving the right of review of a procuring agency's decision to the Department of Commerce and Consumer Affairs (DCCA) Office of Administrative Hearings (OAH).

This bill balances the desire to expedite procurements delayed by constant protest appeals while preserving a right of review of a procuring agency's decision to the DCCA OAH.

RSI is in **strong support** of S.B. 2457. Thank you for the opportunity to provide our views on this measure.



Hawaii Chapter

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February 14, 2012

Committee on Public Safety, Government Operations, and Military
Affairs
Sen. Will Espero, Chair
Sen. Michelle N. Kidani, Vice Chair

RE: **Comments** of Associated Builders and Contractors of Hawaii
Re SB 2457.

Chair Espero, Vice Chair Kidani & 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 are concerned that this bill because while well intentioned it misses the mark in making the contracting process more efficient while maintaining the integrity of the procurement system. Raising the standard of proof in the administrative hearings brings a significant unintended consequence in tolerating flawed decisions by the procurement officers by the contracting agencies.

The administrative hearings process serves as a valuable check and balance against the contracting agencies. In many cases the same contracting officer that handles a solicitation is the one that is deciding an initial protest of a solicitation. This bill may send the wrong message to the contracting agencies that unless they are being arbitrary, capricious, fraudulent, or clearly erroneous their decision is not going to be overruled. This might lead to less due diligence on the part of the contracting agency to enforce the procurement code.

This bill will also have the unintended consequence of allowing bids that may have significant errors in being sustained as the higher standard of proof sets a bar that is even higher than the bar required in civil court lawsuits. This bar may allow significant procurement code violations to fall through the cracks as the high standard of proof will be too difficult to overcome except in the most extreme cases.

Thank you for the opportunity to testify.

America's Best Contractors

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February 13, 2012

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

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DATE: Tuesday, February 14, 2012
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Dear Chair Espero, Vice Chair Kidani and Members of the Committee:

Grace Pacific Corporation **strongly supports** S.B 2457, Relating to Procurement.

S.B. 2457 proposes to limit a hearing officer's review of the procuring agency's decision in a bid protest under section 103D-701, HRS, by removing *de novo* review. Instead, unless the procurement officer's decision is shown by clear and convincing evidence to be arbitrary, capricious, fraudulent, or clearly erroneous, the decision shall stand.

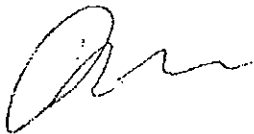
Grace Pacific Corporation supports S.B. 2457, and is also in support of any amendments that the General Contractors Association of Hawaii may propose. The intent of the bill is to simplify and expedite the procurement appeal process by recognizing the procuring agency's experience and expertise in the procurement process, while preserving the right of review of a procuring agency's decision to the Department of Commerce and Consumer Affairs (DCCA) Office of Administrative Hearings (OAH).

This bill retains a bid protester's right to a hearing before the OAH, but limits the hearing officer's review to the record of the procuring agencies decision below. Under this bill, the OAH review is generally limited to a review of the written record of procuring agency's protest proceedings for evidence of decisions that may be arbitrary, capricious, fraudulent, or clearly erroneous.

This bill balances the desire to expedite procurements delayed by constant protest appeals while preserving a limited right of review of a procuring agency's decision to the DCCA OAH.

For the above mentioned reasons, Grace Pacific Corporation is in **strong support** of S.B. 2457 and respectfully requests this Committee to pass this measure.

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



Raymond Nii
Grace Pacific Corporation
Manager, Eng, Admin, IDIQ

KING & NEEL, INC.

1164 Bishop Street • Suite 1710 • Honolulu, Hawaii 96813
Telephone: (808) 521-8311
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February 13, 2012

TO: HONORABLE SENATORS WILL ESPERO, CHAIR, MICHELLE KIDANI,
VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON
PUBLIC SAFETY, GOVERNMENT OPERATIONS AND MILITARY
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Dear Chair Espero, Vice Chair Kidani and Members of the Committee:

King & Neel, Inc. strongly supports S.B 2457, Relating to Procurement.

S.B. 2457 proposes to limit a hearing officer's review of the procuring agency's decision in a bid protest under section 103D-701, HRS, by removing *de novo* review. Instead, unless the procurement officer's decision is shown by clear and convincing evidence to be arbitrary, capricious, fraudulent, or clearly erroneous, the decision shall stand.

King & Neel, Inc. supports S.B. 2457, and is also in support of any amendments that the General Contractors Association of Hawaii may propose. The intent of the bill is to simplify and expedite the procurement appeal process by recognizing the procuring agency's experience and expertise in the procurement process, while preserving the right of review of a procuring agency's decision to the Department of Commerce and Consumer Affairs (DCCA) Office of Administrative Hearings (OAH).

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Page 2 of 2

This bill balances the desire to expedite procurements delayed by constant protest appeals while preserving a limited right of review of a procuring agency's decision to the DCCA OAH.

For the above mentioned reasons, King & Neel, Inc. is in **strong support** of S.B. 2457 and respectfully requests this Committee to pass this measure.

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



S & M SAKAMOTO, INC.

GENERAL CONTRACTORS

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

February 14, 2012

TO: HONORABLE SENATORS WILL ESPERO, CHAIR, MICHELLE KIDANI,
VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON
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Dear Chair Espero, Vice Chair Kidani and Members of the Committee:

S&M Sakamoto, Inc. strongly supports S.B 2457, Relating to Procurement.

S.B. 2457 proposes to limit a hearing officer's review of the procuring agency's decision in a bid protest under section 103D-701, HRS, by removing *de novo* review. Instead, unless the procurement officer's decision is shown by clear and convincing evidence to be arbitrary, capricious, fraudulent, or clearly erroneous, the decision shall stand.

S&M Sakamoto, Inc. supports S.B. 2457, and is also in support of any amendments that the General Contractors Association of Hawaii may propose. The intent of the bill is to simplify and expedite the procurement appeal process by recognizing the procuring agency's experience and expertise in the procurement process, while preserving the right of review of a procuring agency's decision to the Department of Commerce and Consumer Affairs (DCCA) Office of Administrative Hearings (OAH).

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February 14, 2012
Page 2 of 2

For the above mentioned reasons, S&M Sakamoto, Inc. is in **strong support** of S.B. 2457 and respectfully requests this Committee to pass this measure.

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

Sincerely,

S&M Sakamoto, Inc.

A handwritten signature in black ink, appearing to read "DM Ideta", written in a cursive style.

Dennis M. Ideta
Senior Vice President

HEALY TIBBITTS BUILDERS, INC.

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February 14, 2012

TO: HONORABLE SENATORS WILL ESPERO, CHAIR, MICHELLE KIDANI,
VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON
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Dear Chair Espero, Vice Chair Kidani and Members of the Committee:

Healy Tibbitts Builders, Inc. **strongly supports** S.B 2457, Relating to Procurement.

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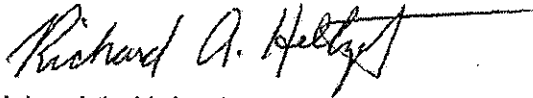
Honorable Will Espero, Chair
Committee on Public Safety, Government Operations and Military Affairs
February 14, 2012
Page 2 of 2

This bill balances the desire to expedite procurements delayed by constant protest appeals while preserving a limited right of review of a procuring agency's decision to the DCCA OAH.

For the above mentioned reasons, Healy Tibbitts Builders, Inc. is in **strong support** of S.B. 2457 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.

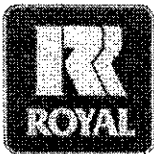
A handwritten signature in black ink, reading "Richard A. Heltzel", with a horizontal line extending to the right from the end of the signature.

Richard A. Heltzel
President

February 14, 2012

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

SUBJECT: **STRONG SUPPORT OF S.B. 2457, RELATING TO PROCUREMENT.**
Requires a hearing officer to affirm the decision of a procurement officer in
protests filed under section 103D-701, HRS, unless the procurement
officer's decision is shown by clear and convincing evidence to be
arbitrary, capricious, fraudulent, or clearly erroneous.



HEARING

DATE: Tuesday, February 14, 2012
TIME: 3:15 PM
PLACE: Conference Room 224

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

ROYAL CONTRACTING CO., LTD. strongly supports S.B 2457, Relating to Procurement.

S.B. 2457 proposes to limit a hearing officer's review of the procuring agency's decision in a bid protest under section 103D-701, HRS, by removing *de novo* review. Instead, unless the procurement officer's decision is shown by clear and convincing evidence to be arbitrary, capricious, fraudulent, or clearly erroneous, the decision shall stand.

ROYAL CONTRACTING CO., LTD. supports S.B. 2457, and is also in support of any amendments that the General Contractors Association of Hawaii may propose. The intent of the bill is to simplify and expedite the procurement appeal process by recognizing the procuring agency's experience and expertise in the procurement process, while preserving the right of review of a procuring agency's decision to the Department of Commerce and Consumer Affairs (DCCA) Office of Administrative Hearings (OAH).

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This bill balances the desire to expedite procurements delayed by constant protest appeals while preserving a 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 S.B. 2457 and respectfully requests this Committee to pass this measure.**

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



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

February 13, 2012

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

SUBJECT: **STRONG SUPPORT OF S.B. 2457, RELATING TO PROCUREMENT.**
Requires a hearing officer to affirm the decision of a procurement officer in
protests filed under section 103D-701, HRS, unless the procurement
officer's decision is shown by clear and convincing evidence to be
arbitrary, capricious, fraudulent, or clearly erroneous.

HEARING

DATE: Tuesday, February 14, 2012

TIME: 3:15 PM

PLACE: Conference Room 224

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

Nordic PCL Construction, Inc. strongly supports S.B 2457, Relating to Procurement.

S.B. 2457 proposes to limit a hearing officer's review of the procuring agency's decision in a bid protest under section 103D-701, HRS, by removing *de novo* review. Instead, unless the procurement officer's decision is shown by clear and convincing evidence to be arbitrary, capricious, fraudulent, or clearly erroneous, the decision shall stand.

Nordic PCL Construction, Inc. supports S.B. 2457, and is also in support of any amendments that the General Contractors Association of Hawaii may propose. The intent of the bill is to simplify and expedite the procurement appeal process by recognizing the procuring agency's experience and expertise in the procurement process, while preserving the right of review of a procuring agency's decision to the Department of Commerce and Consumer Affairs (DCCA) Office of Administrative Hearings (OAH).

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LICENSE #ABC-17

1099 ALAKEA STREET, SUITE 1560, HONOLULU, HI 96813
TELEPHONE (808) 541-9101 ♦ FAX (808) 541-9108



Honorable Will Espero, Chair
Committee on Public Safety, Government Operations and Military Affairs
February 13, 2012
Page 2 of 2

This bill balances the desire to expedite procurements delayed by constant protest appeals while preserving a limited right of review of a procuring agency's decision to the DCCA OAH.

For the above mentioned reasons, **Nordic PCL Construction, Inc.** is in **strong support** of S.B. 2457 and respectfully requests this Committee to pass this measure.

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

Yours truly,

NORDIC PCL CONSTRUCTION, INC

A handwritten signature in black ink, appearing to read "Glen Kaneshige". The signature is written in a cursive style with a large, looping flourish at the end.

Glen Kaneshige
President



February 14, 2012

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

SUBJECT: **STRONG SUPPORT OF S.B. 2457, RELATING TO PROCUREMENT.**
Requires a hearing officer to affirm the decision of a procurement officer in protests filed under section 103D-701, HRS, unless the procurement officer's decision is shown by clear and convincing evidence to be arbitrary, capricious, fraudulent, or clearly erroneous.

HEARING

DATE: Tuesday, February 14, 2012
TIME: 3:15 PM
PLACE: Conference Room 224

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

Rons Construction Corporation **strongly supports** S.B 2457, Relating to Procurement.

S.B. 2457 proposes to limit a hearing officer's review of the procuring agency's decision in a bid protest under section 103D-701, HRS, by removing *de novo* review. Instead, unless the procurement officer's decision is shown by clear and convincing evidence to be arbitrary, capricious, fraudulent, or clearly erroneous, the decision shall stand.

Rons Construction Corporation supports S.B. 2457, and is also in support of any amendments that the General Contractors Association of Hawaii may propose. The intent of the bill is to simplify and expedite the procurement appeal process by recognizing the procuring agency's experience and expertise in the procurement process, while preserving the right of review of a procuring agency's decision to the Department of Commerce and Consumer Affairs (DCCA) Office of Administrative Hearings (OAH).

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February 14, 2012
Page 2

This bill balances the desire to expedite procurements delayed by constant protest appeals while preserving a limited right of review of a procuring agency's decision to the DCCA OAH.

For the above mentioned reasons, Rons Construction Corporation is in **strong support** of S.B. 2457 and respectfully requests this Committee to pass this measure.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald K. Oshiro". The signature is written in a cursive style with a prominent initial "R".

Ronald K. Oshiro, President
Rons Construction Corporation



February 13, 2012

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

SUBJECT: **STRONG SUPPORT OF S.B. 2457, RELATING TO PROCUREMENT.**
Requires a hearing officer to affirm the decision of a procurement officer in
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officer's decision is shown by clear and convincing evidence to be arbitrary,
capricious, fraudulent, or clearly erroneous.

HEARING

DATE: Tuesday, February 14, 2012
TIME: 3:15 PM
PLACE: Conference Room 224

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

Forest City Hawaii strongly supports S.B 2457, Relating to Procurement.

S.B. 2457 proposes to limit a hearing officer's review of the procuring agency's decision in a bid protest under section 103D-701, HRS, by removing *de novo* review. Instead, unless the procurement officer's decision is shown by clear and convincing evidence to be arbitrary, capricious, fraudulent, or clearly erroneous, the decision shall stand.

Forest City Hawaii supports S.B. 2457, and is also in support of any amendments that the General Contractors Association of Hawaii may propose. The intent of the bill is to simplify and expedite the procurement appeal process by recognizing the procuring agency's experience and expertise in the procurement process, while preserving the right of review of a procuring agency's decision to the Department of Commerce and Consumer Affairs (DCCA) Office of Administrative Hearings (OAH).

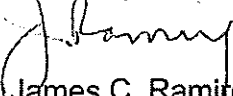
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This bill balances the desire to expedite procurements delayed by constant protest appeals while preserving a limited right of review of a procuring agency's decision to the DCCA OAH.

For the above mentioned reasons, **Forest City Hawaii** is in strong support of S.B. 2457 and respectfully requests this Committee to pass this measure.

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

Sincerely,



James C. Ramirez
Vice President, Construction