

HB 1963

**RELATING TO
PROCUREMENT**

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

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

4 "§103D- Joint offers and awards not prohibited; rules.

5 (a) Nothing in this chapter shall be construed to prohibit:

6 (1) Two or more separate entities from submitting a single
7 joint offer in response to a solicitation; provided
8 that a joint offer shall be considered by a purchasing
9 agency as one offer; or

10 (2) A purchasing agency from awarding a single contract to
11 two or more separate entities that have submitted a
12 joint offer.

13 (b) The procurement policy board shall adopt rules,
14 pursuant to chapter 91, that prescribe procedures for joint
15 offers and contract awards to joint offerors."



H.B. NO. 1963

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

4 SECTION 3. New statutory material is underscored.

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

6

INTRODUCED BY:

Andy Evans
Lyn DeCristo
Paul J. ...
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[Signature]

JAN 19 2018

H.B. NO. 1963

Report Title:

Procurement; Joint Offers

Description:

Directs the procurement policy board to adopt rules for joint offers and joint awards.

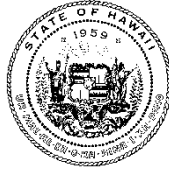
The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



HB 1963

TESTIMONY

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR
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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
LABOR AND PUBLIC EMPLOYMENT

February 13, 2018, 9:15 AM

House Bill 1963
RELATING TO PROCUREMENT

Chair Johanson, Vice-Chair Holt and members of the committees, thank you for the opportunity to submit testimony on HB 1963. The State Procurement Office (SPO) opposes this bill with the following concerns.

This bill amends HRS 103D by adding a section on joint offers. As stated in the bill:

“...Nothing in this chapter shall be construed to prohibit:

- (1) Two or more separate entities from submitting a single joint offer in response to a solicitation; provided that a joint offer shall be considered by a purchasing agency as one offer; or
 - (2) A purchasing agency from awarding a single contract to two or more separate entities that have submitted a joint offer.
- (b) The procurement policy board shall adopt rules, pursuant to chapter 91, that prescribe procedures for joint offers and contract awards to joint offerors.”

There are no prohibitions in our Hawaii procurement code or the Federal Acquisition Regulation (FAR) to awarding to a joint venture making this bill **unnecessary**. Many of our cooperative purchases award to multiple vendors for a single solicitation.

Further, adding this language to the statute could be utilized for nefarious purposes when issues of collusion arise.

The procurement code provides flexibility, whereas, to mandate joint ventures, erodes this flexibility. It should be left up to the procurement officer to decide if joint ventures may or may not be submitted in response to a solicitation. There are risks that must be considered and

weighed with joint ventures involving disagreements and disputes among the contractors. There is no singular party responsible.

There are additional contractual and legal complexities regarding privity and direct payments. Who are payments to be given to? Our current payment system through the Department of Accounting and General Services connects one prime vendor to each contract payment. What if there is non-performance? What happens if one contractor in a joint venture becomes insolvent? For these reasons and others, awards usually result in separate agreements for each contractor though it may be for the same solicitation.

Thank you.

HB 1963

**LATE
TESTIMONY**