

**The Hawai'i  
Procurement Institute**

**LATE**

March 12, 2018

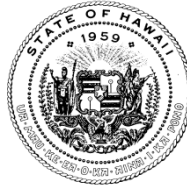
Senate Committee on Government Operations  
HB 2178, Relating to Procurement

Aloha Chair Kim, Vice Chair Ruderman and members of the committee:

We are writing to respectfully oppose HB 2178, relating to procurement. This bill removes the current \$10,000 maximum limit on a cash or protest bond that must be posted for a procurement award protest. It appears intended to reduce the number of protests on the premise that *protests*, rather than the underlying cause of protests, unnecessarily or improperly delays the award of government contracts. Protests of contract awards, however, are essential legal tools – the only mechanisms available -- to review the actions of procurement officials to ensure publicly funded contracts are awarded properly. Reducing, or attempting to discourage, protests is contrary to the public interest of ensuring proper contract awards.

The Hawai'i Procurement Institute is dedicated to sound procurement policy and is committed to promoting procurement education. It is a 501(c)(3) organization comprised of volunteers who are passionate about improving Hawai'i's procurement process.

Thank you for this opportunity to testify.



**Testimony by:**  
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IN REPLY REFER TO:

**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

February 13, 2018  
2:45 p.m.  
State Capitol, Room 224

**H.B. 2178**  
**RELATING TO PROCUREMENT**

Senate Committee on Government Operations

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The Department of Transportation (DOT) supports the proposed revision to Hawaii Revised Statutes (HRS) § 103D-709(e)(3) which proposes to remove the \$10,000 maximum limit on a cash or protest bond that must be posted for a procurement award protest.

When a project solicitation or project award is protested, the government agency replies either denying or sustaining the protest. The protester then has an opportunity to appeal the government agency's decision to the Department of Commerce and Consumer Affairs (DCCA) Office of Administrative Hearings (OAH). Under the current law, if the contract has an estimated value over \$1,000,000, a protest bond of one-half percent capped at \$10,000 is required. If the protester prevails, the \$10,000 bond is returned, if the protester does not prevail, the \$10,000 bond is deposited into the general fund.

There have been two (2) recent DOT protest decisions that went through the OAH administrative hearing process. Both protesters did not prevail in the administrative hearing and therefore, each of the \$10,000 protest bond was deposited into the general fund. One project contract had an estimated value of \$11,877,594<sup>1</sup>, the other had an estimated contract value of \$169,948,741<sup>2</sup>. Should the cap on the protest bond be removed, using the examples above, the amount deposited in the general fund might have been \$59,388, and \$849,744 respectively.

Thank you for the opportunity to provide testimony.

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<sup>1</sup> One-half percent equals \$59,388.

<sup>2</sup> One-half percent equals \$849,744.