



STATE OF HAWAII
STATE PROCUREMENT OFFICE

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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
GOVERNMENT REFORM
FEBRUARY 4, 2022; 9:30 AM

HOUSE BILL 1908
RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Wildberger, and members of the committee, thank you for the opportunity to submit testimony on HB1908. The State Procurement Office (SPO) opposes the language that would allow vendors an additional twenty-four (24) hours to submit corrected bids.

The SPO provides the following comments:

- Section 3-122-31(c)(1), Hawaii Administrative Rules allows for corrections for missing signatures, typographical and arithmetical errors, or other mistakes that is a minor informality which does not affect price, quantity, delivery, or contractual conditions.
- Section 3-122-31(c)(1)(C), Hawaii Administrative Rules, further allows the procurement officer to waive, or be corrected, mistakes if it is in the best interest of the State.
- The 24-hour allowance will add another step in the procurement process.
- The 24-hour allowance will add another component for which vendors can protest.
- This is unfair to bidders who submitted accurate and timely responses.
- The bill addresses only construction and does not afford goods and services, procured by chapter 103D-302, HRS, the same benefits.
- The bill does not address bid shopping as the bill is intended.

Consequently, the bill is not necessary and only adds to the complexity of construction procurement.

Thank you.

Testimony of the Contractors License Board

**Before the
Senate Committee on Government Reform
Friday, February 4, 2022
9:30 a.m.
Via Videoconference**

**On the following measure:
H.B. 1908, RELATING TO PROCUREMENT**

WRITTEN TESTIMONY ONLY

Chair McKelvey and Members of the Committee:

My name is Neal Arita, and I am the Legislative Committee Chairperson of the Contractors License Board (Board).

The purposes of this bill are to: (1) allow bidders to clarify or correct immaterial or technical information required as part of a bid submission for up to twenty-four hours after the bid submission deadline; (2) require that bids for construction be opened no sooner than twenty-four hours after the deadline for the submission of bids; and (3) define "immaterial or technical information".

The Board will review this bill at its next publicly noticed meeting on February 25, 2022. In the meantime, the Board offers comments. In the past, the Board has expressed concerns on similar measures that amend Hawaii Revised Statutes (HRS) section 103D-302 to allow a contractor with a suspended or forfeited license to be deemed valid as long as the contractor is properly licensed at the time of award.

The Board believes that this conflicts with the requirements of HRS chapter 444 and the Board's longstanding interpretation that a person must be licensed as a contractor at the time of submitting a proposal or bid (as well as at the time of award) on a construction project. The Board has consistently taken the position that a contractor's license is required when a person submits a bid on a construction project to another person, entity, or government agency. That is because the person who is submitting the bid is acting, advertising, or holding the person's self out as a contractor and must therefore be licensed at that time.

This bill appears to condone or authorize unlicensed activity from the time of bid submittal to and through the time the contract is awarded. An unlicensed contractor is subject to disciplinary action, including a fine.

Additionally, the prime, general, or other specialty contractor that uses that unlicensed person's bid may also be subject to disciplinary action.

The Board believes this bill will cause regulatory uncertainty about unlicensed activity itself and the disciplinary action that can be imposed against the unlicensed contractor. The Board therefore respectfully requests that this bill include language that clearly indicates that the Board and the Regulated Industries Complaints Office still retain disciplinary jurisdiction over the subcontractors and general contractors involved in the bid. In other words, the Board requests that this bill be amended to clearly specify that the proposed amendments to HRS section 103D-302 do not supersede or negate the Board/State's disciplinary powers under HRS chapter 444 for unlicensed contracting.

Thank you for the opportunity to testify on this bill.



The Judiciary, State of Hawai'i

Testimony to the Thirty-First State Legislature, 2022 Regular Session

House Committee on Government Reform
Representative Angus L.K. McKelvey, Chair
Representative Tina Wildberger, Vice-Chair

House Committee on Legislative Management
Representative Dale T. Kobayashi, Chair
Representative John M. Mizuno, Vice Chair

Friday, February 4, 2022 at 9:30 a.m.
Via Videoconference

by
Terri Gearon
Financial Services Department Director
Hawai'i State Judiciary

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1908, Relating to Procurement.

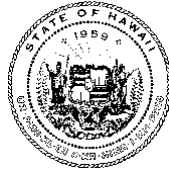
Purpose: Allows bidders to clarify or correct immaterial or technical information required as part of a bid submission for up to twenty-four hours after the bid submission deadline. Requires that bids for construction be opened no sooner than twenty-four hours after the deadline for the submission of bids. Defines "immaterial or technical information".

Judiciary's Position:

The Judiciary takes no position on the merits of the bill and submits the following concerns for the Legislature's consideration.

The Judiciary puts construction projects out to bid over the State of Hawai'i eProcurement system (HIePRO). As currently configured, HIePRO does not provide a way for a bidder to clarify or correct immaterial or technical information after the deadline for bid submission has passed. It is unclear to the Judiciary what, if any, modifications could be made to HIePRO, which is controlled by the State Procurement Office, to accommodate the change to HRS 103D-302 as proposed in House Bill No. 1908.

Thank you for the opportunity to testify on this important measure.



CURT T. OTAGURO
COMPTROLLER
AUDREY HIDANO
DEPUTY COMPTROLLER

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

WRITTEN TESTIMONY
OF
CURT T. OTAGURO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
GOVERNMENT REFORM

FRIDAY, FEBRUARY 4, 2022, 9:30 A.M.
VIA VIDEOCONFERENCE, STATE CAPITOL

H.B. 1908

RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Wildberger, and members of the Committee, thank you for the opportunity to submit testimony on H.B. 1908. The Department of Accounting and General Services (DAGS) opposes this bill and offers the following comments.

This bill increases the responsibilities of procurement agencies by inserting an additional bidding step and creating two bidding deadlines (bid receipt, then bid opening) requiring administering as well as additional potential interpretation of “immaterial or technical information” for corrections.

Section 103D-302, Hawaii Revised Statutes, already allows that bids that do not comply with the sub-list requirement may be accepted if acceptance is in the best interest of the state and the value of the work to be performed is equal to or less than one percent of the total bid amount.

DAGS believes contractors’ demonstration of their capacity to perform begins with assembling their bids in a manner to ensure timely, complete, and accurate submittal information

by the bid opening deadline. The insertion of a “buffer” time period to allow for corrections further enables bidders to wait until the last minute to assemble their bids without taking extra time to ensure their submittals are suitably finalized.

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

HB-1908

Submitted on: 2/3/2022 8:30:28 AM

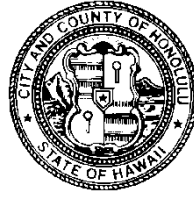
Testimony for GVR on 2/4/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Christine Kinimaka	DAGS	Oppose	Yes

Comments:

I am available for questions in support of DAGS written testimony submitted.

RICK BLANGIARDI
MAYOR



ANDREW T. KAWANO
DIRECTOR

CARRIE CASTLE
DEPUTY DIRECTOR

TESTIMONY OF ANDREW T. KAWANO
DIRECTOR OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
BEFORE THE HOUSE COMMITTEE ON GOVERNMENT REFORM
February 4, 2022, 9:30 AM, Conference Room 309 and Videoconference

TO: The Honorable Angus L.K. McKelvey, Chair
and Members of the House Committee on Government Reform

RE: OPPOSITION OF HOUSE BILL 1908, RELATING TO PROCUREMENT

The Department of Budget and Fiscal Services, City and County of Honolulu (City), **opposes** House Bill (HB) 1908, Relating to Procurement.

The Hawaii Administrative Rules (HAR) §3-122-31 allows for an obvious mistake in a bid to be corrected, withdrawn or waived to the extent it is not contrary to the best interest of the purchasing agency or to the fair treatment of other bidders. The proposed change to the Hawaii Revised Statutes (HRS) 103D-302 is not required as the administrative rules already allow for a correction to immaterial information and that responsibility is retained by the entity that is responsible to govern public ethical procurements.

The addition in Section 2, HRS 103D-302(j) appears to violate HRS Chapter 444 and contradict DCCA Office of Administrative Hearings case PCX-2011-005 that a bidder (and/or its subcontractors) must be properly licensed at the time of bid submission.

For the reasons stated above, the City respectfully opposes House Bill 1908.

Mahalo for the opportunity to testify on this bill. Should you have any questions or concerns, please feel free to contact the Department of Budget & Fiscal Services' Division of Purchasing at 808-768-5535 or bfs purchasing@honolulu.gov.



1088 BISHOP STREET #408
HONOLULU, HI 96813
PH: (808) 597-1216

GREGG S. SERIKAKU
EXECUTIVE DIRECTOR

February 1, 2022

Representative Angus L.K. McKelvey, Chair
Representative Tina Wildberger, Vice-Chair
House Committee on Government Reform

Chair McKelvey, Vice Chair Wildberger, and Members of the Committee:

SUBJECT: HB1908 RELATING TO PROCUREMENT

My name is Gregg Serikaku, Executive Director for the Plumbing and Mechanical Contractors Association of Hawaii, and we are the State's largest association representing contractors in the plumbing, air conditioning, refrigeration, steamfitter, and fire sprinkler trades throughout Hawaii.

We are very concerned with the proposed language in HB1908 which provides bidders 24 hours to correct non-material or technical information related to the subcontractor listing. This allowance creates ambiguity in the sublisting requirement and opens the door to the expansion of further detrimental changes that may increase the potential of unethical bid shopping.

In order to preserve the valuable anti-bid shopping protections that the subcontractor listing affords, the following critical provisions of the bill must be maintained:

- The sublisting and scope of work must be submitted at the time of bid.
- No additions, substitutions, or changes in scope of work are to be allowed.
- Allowed changes must be immaterial, must not affect substance, and must not be prejudicial to other vendors.
- Bids must not be opened until the allowed correction period expires.

Finally, if this committee is determined to move this bill forward, we recommend that a sunset period be added so that the stakeholders can assess the effect of the proposed changes.

Thank you for this opportunity to provide our testimony.

Respectfully,

A handwritten signature in black ink that reads "Gregg S. Serikaku".

Gregg S. Serikaku
Executive Director

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

February 4, 2022

Testimony To: House Committee on Government Reform
Representative Angus L.K. McKelvey, Chair

Presented By: Tim Lyons, President

Subject: H.B. 1908 – RELATING TO PROCUREMENT

Chair McKelvey and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The SAH represents the following nine separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL AND AIR CONDITIONING NATIONAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

We support the intent of this bill.

This Committee may be aware that the subject of subcontractor listing has been one that has been around for several years and both sides are fairly set in their positions. The language in this bill tends to work towards a solution of what general contractors say is insufficient time as they put their bids together in order to check over the information and be sure they have not made an error. We are not sure that we would subscribe to that theory because we think that anytime a company is submitting a bid, it needs to be sure of the accuracy contained in it including the listing of subcontractors. However, with the parameters that are specified in this bill and in the "spirit of cooperation", we can support the intent.

We do ask however that there be one (1) minor stylistic change on page 4 in the underlined portions of (b)(2) and it should read as follows:

"(2) allow the bidder to clarify or correct immaterial or technical information required by paragraph (1) for up to twenty-four (24) hours after the bid submission deadline; provided that any changes to the nature and scope of work as listed and any additions or substitutions of listed joint subcontractors shall be prohibited.

Our wording just attempts to make it clear that the prohibition applies not only to substitutions but also to any changes in the nature and scope of work as listed.

We would further respectfully ask the Committee to consider a two (2) year sunset clause. This is an extremely important area to the financial health of subcontractors and while we hope it satisfies the generals, we respectfully request a trial run and to that extent, please insert a sunset clause. We ask that the Committee not indulge any other changes that might alter this specificity of this particular

version inasmuch as the versions have been worked on for several years and a deviation from that, we believe would be in bad faith.

Thank you.

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Phone: 808-833-1681 FAX: 839-4167
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Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 2, 2022

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE TINA WILDBERGER, VICE CHAIR, COMMITTEE ON GOVERNMENT REFORM

SUBJECT: **SUPPORT OF H.B. 1908, RELATING TO PROCUREMENT.** Allows bidders to clarify or correct immaterial or technical information required as part of a bid submission for up to twenty-four hours after the bid submission deadline. Requires that bids for construction be opened no sooner than twenty-four hours after the deadline for the submission of bids. Defines "immaterial or technical information".

HEARING

DATE: Thursday, February 3, 2022
TIME: 9:30 a.m.
PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Wildberger and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred (500) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. Our mission is to elevate Hawaii's construction industry and strengthen the foundation of our community.

GCA is in **support** of H.B. 1908, which allows bidders to clarify or correct immaterial or technical information required as part of a bid submission for up to twenty-four hours after the bid submission deadline.

This measure seeks to reduce the risks of protests due to the subcontractor listing requirements of the Procurement Code. The subcontractor listing requirement has become a way in which bidders attack the responsiveness of a proposal, resulting in awards to non-low bidders, increased costs to the state and taxpayers, and delayed projects due to a technicality in the submitted subcontractor list. As a result, not only does the lowest bidder and their listed subcontractors get disqualified from the project, but the state could end up paying more for the project.

Under this part, the procurement officer would close the bidding in the usual manner, but would not open the bids until twenty-four hours after the closing. Each bidder shall have twenty-four hours after the bid closing to clarify and correct minor technical issues with the subcontractors list requirements under Section 103D-302, HRS. The proposed change will permit the bidder to ensure that all subcontractors who have submitted bids to the general contractor have met all of the requirements to perform work on state and county projects, including meeting all licensing,

bonding and insurance requirements, as applicable. The additional time is necessary because in most cases the general contractor does not receive bid prices from the various subcontractors until shortly before the bid must be submitted to the state agency. This means that the general contractor does not have time to check whether the subcontractors who have submitted bids meet the requirements to work on the job, especially the proper licenses issued by the Contractors License Board. Given the large number of “C” (currently over 100 issued and growing), it becomes increasingly difficult for the general contractor to ascertain licenses and verify whether every subcontractor has the proper license to perform the work he has submitted a bid to do.

This legislation is not an attempt to give general contractors an advantage in submitting bids, nor is it, as some may argue, an opportunity to bid-shop. Instead, this legislation is increasing efficiency in the procurement process by allowing contractors to verify the information that subcontractors provide. The bill does not permit the contractor to change its proposed bid amount. The twenty-four hours will permit the bidder to ensure the subcontractor/joint contractor list is complete and listed subcontractors/joint contractors are properly licensed, are bondable (where applicable), and have all the required insurance coverage. This will reduce the likelihood of errors and result in reducing the number of bid protests which often delay public works projects and, in some cases, increase the cost of public works project for the state. This will result in more complete and accurate bid submittals and reduce the number of potential bid protests.

This would be very similar to California’s process and was included as an unofficial suggestion in the independent report submitted by the State Procurement Office. The report can be found here: https://spo.hawaii.gov/wp-content/uploads/2020/01/CPPR-Report_HR142-SLHL-2016-FINAL_01-13-20.pdf

The relevant portion starts on page 111 and the suggestion to adopt a variation of California’s model, which allows a 24-hour period to correct errors appears at the bottom of page 114 of the report. Further, the report specifies that in 2018, subcontractor listing accounts for over 60% of all construction related bid protests and that 45% of all protests the State received (including all protests related to non-construction) alleged a defect in the listing of subcontractors for a construction project.

The definition of “immaterial or technical information” is modeled after Utah’s Procurement Code. They define the term “immaterial error”: https://le.utah.gov/xcode/Title63g/Chapter6a/C63G-6a_1800010118000101.pdf

For these reasons we ask that the Committee pass this measure.

Thank you for this opportunity to testify in support of this measure.

Painting Industry of Hawaii Labor Management Cooperation Trust Fund

Hawaii Tapers Market Recovery Trust Fund

Hawaii Glaziers, Architectural Metal Glassworkers Local Union 1889
AFL-CIO Stabilization Trust Fund

Carpet, Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund

February 3, 2022

Representative Angus L.K. McKelvey, Chair
House Committee on Government Reform
Representative Dale T. Kobayashi, Chair
House Committee on Legislative Management
415 South Beretania Street
Honolulu, Hawaii 96813

Re: House Bill 1908 (Relating To Procurement)
Hearing date: February 4, 2022
Time: 9:30 a.m.

Dear Chairs McKelvey and Kobayashi and Members of the Committees:

Thank you for this opportunity to submit testimony on behalf of the Painting Industry of Hawaii Labor Management Cooperation Trust Fund, Hawaii Tapers Market Recovery Trust Fund, Hawaii Glaziers, Architectural Metal Glassworkers Local Union 1889 AFL-CIO Stabilization Trust Fund, and Carpet, Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund in **opposition** to House Bill 1908. The aforesaid organizations are labor management cooperation funds between the Painters Union, Tapers Union, Glaziers Union, and Carpet and Soft Tile Layers Union and their signatory contractors.

As an initial matter, we strongly disagree with statements in Section 1 of the Bill finding that the subcontractor listing requirement of the procurement laws, "has the unintended consequence of increasing the number and complexity of construction protests." The foregoing implies that subcontractor listing is a significant problem causing delays and increased cost for public construction projects. A task force convened pursuant to Senate Concurrent Resolution 92, S.D.2 (2013) studied the issue of bid protests related to subcontractor listing. The 16 page report and 91 pages of attachments can be found online at the Department of Accounting and General Services' website at:

<https://ags.hawaii.gov/wp-content/uploads/2012/09/ProcurementTaskForceReportLS2013.pdf>

In the report, the Task Force found that, in general, bid protests did **not** result in any significant delays or increased costs. See Task Force Report at 8-9. The work of the Task Force revealed that protests related to the subcontractor listing requirement increased costs to the State by 0.06% in FY2013 and 0.34% in FY2014. See id. at 13. The Task Force, which included the Comptroller, the Department of Accounting and General Services, the State Procurement Office and other procurement agencies as participants, recommended no changes be made to Chapter 103D with respect to the subcontractor listing requirement. See id. at 10-11.

The reason for our opposition to this measure is that amending the Procurement Code to allow clarification or correction of non-material or technical information contained in or information omitted from a bid is entirely unnecessary, because such corrections are already expressly allowed under Hawaii Revised Statutes §103D-302(g). That section provides in pertinent part:

Correction or withdrawal of inadvertently erroneous bids before or after the award, or cancellation of invitations for bids, awards, or contracts based on such bid mistakes **shall be permitted** in accordance with rules adopted by the policy board.

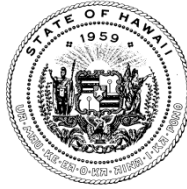
[Emphasis added]. Because the Procurement Code already expressly permits bid corrections, there is absolutely no need for this Bill.

Enacting this Bill, which creates entirely new terms and procedures not currently used in the Procurement Code, will only lead to more confusion in the procurement process. Potentially, this confusion could actually result in an increase in the number of bid protests and could even lead an aggrieved bidder to file a lawsuit seeking clarification over which statute controls and/or the meaning of each statute. In short, it is bad policy to pass legislation that duplicates existing law and which will only cause more confusion and protests.

For all of these reasons, we respectfully ask that the Committees defer this Bill indefinitely. Thank you again for this opportunity to share our **opposition** to this measure.

Jeffrey S. Masatsugu

DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROSS M. HIGASH
EDUARDO P. MANGLALLAN
PATRICK H. MCCAIN
EDWIN H. SNIFFEN

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

February 4, 2022
9:30 A.M.
State Capitol, Teleconference

**H.B. 1908
RELATING TO PROCUREMENT**

House Committee(s) on Government Reform & Legislative Management

The Department of Transportation (DOT) offers **comments** on the bill which would allow bidders to clarify or correct immaterial or technical information required as part of the bid submission for up to twenty-four hours after the bid submission deadline; requires that bids for public works construction projects be opened no sooner than twenty-four hours after the deadline for the submission of bids; and defines immaterial or technical information.

The competitive sealed bidding or invitation for bid (IFB) method of procurement, as the default method, is structured with the intent to ensure fair, ethical, and open bidding opportunities with award to the lowest responsive and responsible bidder. The procurement requirements outline reasonable timelines for advertising, amendments by means of addenda, pre-bid conferences for added clarification and information, and a designated date and time for public bid opening. These guidelines serve to optimally create a procurement environment for fair and ethical competition and bids are evaluated through an objective and measurable process.

Bidders respond to publicly advertised solicitation(s) freely, mindfully, and intentionally. Further, when a bidder responds to an advertised solicitation, the bidder has committed to and bears the responsibility of fulfilling the bidding requirements of the solicitation, to include adherence to bid specifications and provisions with respective timelines. Given the designated date and time explicitly outlined in the bid documents for public reading or electronic opening, it is the bidder's sole responsibility to prepare their bids adequately and diligently for submission by the designated deadline.

Further, the current requirement of bidders to submit a sealed bid for public bid opening at the designated date and time ensures no external handling of the bid document prior to public opening. The bid opening conducted as outlined in the procurement code gives bidders a level of assurance their bid proposals are opened and read as intended and submitted. The bid opening process, from sealed bid submittal to public opening, is

key to avoid any possible misperception of compromise to the integrity of the process. By allowing the additional twenty-four hours to correct and clarify non-material or technical information results in submittal of two bids, one to meet the original bid submittal deadline and the second with corrections. The logistics of securely and appropriately managing the multiple bids creates a burden on the State in conducting the bid opening to ensure the corrected bid documents are accurately changed out for the public reading. More importantly, the additional handling by the State of the bidder's proposal document may introduce the potential for inaccurate and false speculation and accusations by bidders to find fault with the submitted bid and hold the State accountable, should there be an unfavorable result with the bid evaluation and contract award.

The proposed twenty-four hour extension of the public bid opening of sealed bids after the bid submission deadline for purposes of clarifying and correcting bid issues creates the potential of issues like bid shopping for subcontractor listing and dilutes the responsibility factor of the bidder in preparing an acceptable bid by the designated deadline.

The DOT offers the proposed addition to the meaning of "immaterial or technical information" to include:

"Immaterial or technical information includes a missing signature; typographical errors; an error resulting from an inaccuracy or omission; etc. ... *and does not affect price, quantity, quality, or delivery of the bid submitted at the bid deadline*".

Thank you for the opportunity to provide testimony.