



**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 3, 2021, 8:30 AM

HOUSE BILL 376  
RELATING TO PROCUREMENT

Chair McKelvey, Vice-Chair Wildberger, and members of the committee, thank you for the opportunity to submit testimony on HB376. The State Procurement Office (SPO) opposes the bill in its entirety and provides the following comments.

The language proposed in HB376 is identical to §103D-302, Hawaii Revised Statutes (HRS), which already addresses the competitive sealed bidding process with the only difference is reference to the "second lowest bidder". The SPO does not see value-added to awarding a competitive sealed bid to the second lowest bidder when the first bidder may be the lowest, responsive, responsible bidder. Additionally, HB376 does not offer any explanation when it is appropriate to accept the "second lowest bidder." This could easily lead to protests or other legal consequences.

If it is not practicable to initially prepare a purchases description to support an award based on price, as stated in Section 1, page 5, lines 1-3 states, SPO recommends that the agency conduct a Request for Information, pursuant to Section 3-122-9.02. Multi-step invitation for bids, pursuant to Section 3-122-61.05, may also be used when it is not practical to initially prepare a definitive purchase description.

The Hawaii Public Procurement Code (Code) is the single source of public procurement policy to be applied equally and uniformly while providing fairness, open competition, a level playing field, government disclosure, and transparency in the procurement and contracting process vital to good government.

Competitive sealed bidding's primary objective is that the contract shall be awarded with reasonable promptness by written notice to the *lowest, responsible, and responsive* bidder whose bid meets the requirements and criteria set forth in the invitation for bids. It is also a best practice that bids are evaluated for responsiveness solely on the material requirements set forth in the solicitation and must meet all of those requirements unconditionally at the time of bid opening, and no criteria may be used in bid evaluation that is not set forth in the solicitation.

Each procurement is individual and unique to the needs and requirements for that procurement.

The purpose of the criteria is to have a standard used to evaluate of bids to select the procurement. The SPO opposes the bill's language, in its entirety, as it does not address why a competitive sealed bidding award should be made to the second lowest bidder.

Each year new procurement laws are applied to state agencies causing state agency contracts to become more complex and costly. It is difficult to justify a new method of procurement titled, "Competitive sealed bidding to the second lowest bidder."

Thank you

DAVID Y. IGE  
GOVERNOR



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  
COMMITTEE ON GOVERNMENT REFORM

WEDNESDAY, FEBRUARY 3, 2021, 8:30 A.M.  
CONFERENCE ROOM 309, STATE CAPITOL

H.B. 376

RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Wildberger, and members of the Committee, thank you for the opportunity to submit testimony on H.B. 376.

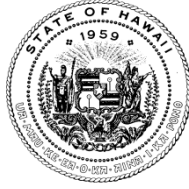
The Department of Accounting and General Services (DAGS) opposes H.B. 376, although we support the concept of awarding construction projects to the second lowest responsible and responsive bidder. We offer the following:

- It may not be necessary to create another section in the procurement code to award to the second lowest responsible and response bidder, as doing so may conflict with other parts of the code.
- Due to the fluctuation of the economy over time, we suggest that the head of the purchasing agency be allowed to determine the method of award prior to, and so set forth in, the solicitation.
- We recommend that further consultation be conducted with others, including the State Procurement Office, to determine if section 103D-302, Competitive Sealed Bidding,

and other impacted sections of the Hawaii Revised Statutes may be revised, instead, to allow the option to award to the second responsive and responsible lowest bid, or as determined by the head of the purchasing agency.

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

DAVID Y. IGE  
GOVERNOR



**TESTIMONY BY:**

JADE T. BUTAY  
DIRECTOR

Deputy Directors  
LYNN A.S. ARAKI-REGAN  
DEREK J. CHOW  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN

**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
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February 3, 2021  
8:30 A.M.  
State Capitol  
Conference Room 309  
VIA VIDEO CONFERENCE

**H.B. 0376**  
**RELATING TO PROCUREMENT**

House Committee on Government Reform

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The Department of Transportation (DOT) **supports** the bill which allows purchasing agencies to use the second low bid method for procurement and determination of award.

As related to past performance as a consideration in evaluating responsibility to ensure quality performance, accountability, and efficient and effective utilization of taxpayer dollars in respect to contract award, the second low bid method of procurement may allow the procurement agency to reserve the right to reject the low bidder should there be justification, after reasonable and diligent inquiry and evaluation, to support the low bidder as nonresponsible and award to the second low bidder in the best interest of the State.

Thank you for the opportunity to provide testimony.