



The Judiciary, State of Hawai'i

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

Senate Committee on Ways and Means
Senator Donovan Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Tuesday, February 15, 2022 at 10:30 a.m.
Via Videoconference

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

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2681, S.D. 1, Relating to Procurement.

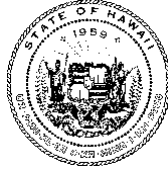
Purpose: Allows bidders to clarify or correct immaterial or technical information required as part of a bid submission for up to twenty-four hours after the bid submission deadline. Requires that bids for construction be opened no sooner than twenty-four hours after the deadline for the submission of bids. Defines "immaterial or technical information." Effective 07/01/2050. Repeals 07/01/2024.

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 Senate Bill No. 2681, S.D. 1.

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
COMMITTEE
ON
WAYS AND MEANS

TUESDAY, FEBRUARY 15, 2022, 10:30 A.M.
VIA VIDEOCONFERENCE, STATE CAPITOL

S.B. 2681, S.D. 1

RELATING TO PROCUREMENT

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee, thank you for the opportunity to submit testimony on S.B. 2681, S.D. 1. 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.

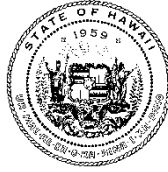
Section 103D-302, Hawaii Revised Statutes, already allows that bids that do not comply with the sub-list requirement may be accepted if acceptance is in the best interest of the state and the value of the work to be performed is equal to or less than one percent of the total bid amount.

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.

Page 4, line 18, should be revised to read, “...listed joint contractors or subcontractors shall be prohibited.”

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



STATE OF HAWAII
STATE PROCUREMENT OFFICE
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email: state.procurement.office@hawaii.gov
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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
WAYS AND MEANS
FEBRUARY 15, 2022; 10:30 a.m.

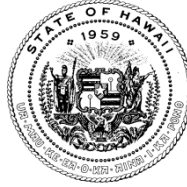
SENATE BILL 2681, SD1
RELATING TO PROCUREMENT

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee, thank you for the opportunity to submit testimony on SB2681, SD1. 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 language in Section 2, page 5, lines 18-20 "...it shall be opened no sooner than twenty-four hours after the deadline for the submission of the bids" is confusing. If the agencies aren't allowed to open the bids, they won't know what other minor errors may exist, thereby further delaying the process. The language of the bill, in addition to the existing rules, implies that bidders are allowed multiple chances to correct their bids.
- 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 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
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Tuesday, February 15, 2022
10:30 A.M.
State Capitol
Conference Room 211
VIA VIDEOCONFERENCE

**S.B. 2681, S.D. 1
RELATING TO PROCUREMENT**

Senate Committee on Ways and Means

The Department of Transportation (DOT) offers **comments** on the bill which proposes to minimize bid challenges, costs, and delays on public works construction projects by allowing bidders of public works construction projects to clarify and correct immaterial or technical issues with subcontractor listings for up to twenty-four hours after the bid submission deadline – provided that any changes to the nature and scope of work and any additions or substitutions of listed joint subcontractors shall be prohibited; requiring that bids for construction be publicly opened no sooner than twenty-four hours after the bid submission deadline; and defining immaterial or technical information to include arithmetical, typographical, and transposition errors – provided that, in the case of error in extension of bid price, unit price shall govern, and minor informalities do not affect price, quantity, quality, delivery, or contractual conditions, such as missing signatures.

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

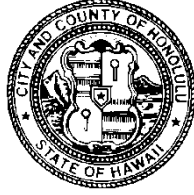
or electronic opening, it is the bidder's sole responsibility to prepare their bids adequately and diligently for submission by the designated deadline.

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.

Thank you for the opportunity to provide testimony.

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 SENATE COMMITTEE ON WAYS AND MEANS
February 15, 2022, 10:30 AM, Conference Room 211 and Videoconference

TO: The Honorable Donovan M. Dela Cruz, Chair
and Members of the Senate Committee on Ways and Means

RE: OPPOSITION OF SENATE BILL 2681 SD1, RELATING TO PROCUREMENT

The Department of Budget and Fiscal Services, City and County of Honolulu (City), **opposes** Senate Bill (SB) 2681 SD1, 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 more importantly, the responsibility and discretion is retained by the authority that was created to govern public ethical procurements.

The proposed amendments will prolong the procurement process, increase chance for protest, and potentially increase costs to the City.

For the reasons stated above, the City respectfully opposes Senate Bill 2681 SD1.

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 bfspurchasing@honolulu.gov.

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LATE



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 15, 2022

TO: HONORABLE DONOVAN DELA CRUZ, CHAIR, HONORABLE GILBERT S.C. KEITH-AGARAN VICE CHAIR, COMMITTEE ON WAYS AND MEANS

SUBJECT: **SUPPORT OF S.B. 2681 H.D.1, 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: Tuesday, February 15, 2022
TIME: 10:30 a.m.
PLACE: Capitol Room 211

Dear Chair Dela Cruz, Vice Chair Keith-Agaran 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 S.B. 2681 H.D.1, 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/CPFR-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 HD1 contains a two-year sunset which GCA has agreed to. This sunset appeases concerns that the some in the industry have concerning this measure. In the spirit of compromise, we ask that the Committee pass this measure to ensure that the parties can continue working on this issue.

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