



STATE OF HAWAII
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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
GOVERNMENT REFORM

March 16, 2022, 9:00 AM

SENATE BILL 3372 SD1
RELATING TO PUBLIC PROCUREMENT

Chair McKelvey, Vice Chair Wildberger, and members of the committee, thank you for the opportunity to submit testimony on SB3372 SD1. The State Procurement Office (SPO) supports the intent of the bill and proposes amendments to Hawaii Revised Statutes (HRS) §103D-707's language on page 1, SECTION 1, line 3 to 17, of the bill, to read as follows:

“§103D-707 Remedies after an award. (a) If after an award it is determined that a solicitation or award of a contract is in violation of law, then:

(1) If the person awarded the contract has not acted fraudulently or in bad faith:

(A) The contract may be ratified and affirmed, or modified; provided [that] it is determined that doing so is in the best interests of the State; or

~~[(B) The contract may rescinded and awarded to the next lowest responsive, responsible bidder to whom the contract would have been awarded were it not for the violation of law, as applicable or as directed by the office of administrative hearing; or]~~”

The SPO also proposes amendments and adding a new subsection (b) to HRS §103D-707's language on page 2, SECTION 1, lines 1 to 14 of the bill as follows:

~~“[(C)]~~ (B) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses, other than attorney's fees, reasonably incurred under the contract, plus a reasonable profit, with such expenses and profit calculated not for the entire term of the contract but only to the point of termination;”

- (2) If the person awarded the contract has acted fraudulently or in bad faith:
 - (A) The contract may be declared null and void; or
 - (B) The contract may be ratified and affirmed, or modified, if the action is in the best interests of the State, without prejudice to the State's rights to such damages as may be appropriate.
- (b) If the award of the contract was made in violation of law, and the award is rescinded and the contract, if executed, is terminated or declared null and void, then:
 - (1) For solicitations issued pursuant to section 103D-302, the contract may be awarded to the next lowest bidder, provided that all prices remain the same as originally bid; or
 - (2) For solicitations issued pursuant to section 103D-303, the contract may be awarded to the next responsible offeror whose proposal is determined in writing to be the next most advantageous, taking into consideration the evaluation factors set forth in the solicitation, and provided that all prices remain the same as originally offered.”

This additional language proposed will clarify that this provision should only apply if the award, not the solicitation, is in violation of law.

Thank you.

Nan Inc

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March 15, 2022

Testimony to: House of Representatives Committee on Government Reform
Chair Angus L.K. McKelvey

Presented By: Nan Chul Shin, Director of Nan, Inc.

Subject: S.B. 3372, SD1 – RELATING TO PUBLIC PROCUREMENT

Chair McKelvey and Members of the Committee:

Nan, Inc. (“Nan”) supports S.B. 3372, SD1. Conferring the Office of Administrative Hearings with a complete set of remedies only further the goals of a fair and efficient procurement code. When the Office of Administrative Hearings determines that a public works contract was improperly awarded, the current code only allows the Office of Administrative Hearings to terminate a contract. Terminating the contract delays the procurement process as the department will have to re-issue the solicitation. Additionally, the status quo unintentionally incentivizes procurement officers to award a project to whomever they chose because at worst the Office of Administrative Hearings can only terminate the contract, allowing the department to redo the solicitation, drafting terms favorable to the entity they wish to award the project.

S.B. 3372, SD1 clearly furthers the goal of ensuring a fair process in which the proper bidder is awarded the project and at the same time prevents delays. This benefits both the State as well as the public.

Thank you for the opportunity to provide testimony.