



STATE OF HAWAII
STATE PROCUREMENT OFFICE

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 586-0554
email: state.procurement.office@hawaii.gov
<http://spo.hawaii.gov>

TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
JUDICIARY

March 3, 2022, 9:30AM

SENATE BILL 3372 SD1
RELATING TO PUBLIC PROCUREMENT

Chair Rhoads, Vice Chair Keohokalole, 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 HRS§ 103D-707's language on page 1, SECTION 1, line 3 to 17 of the bill 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 - ~~[(B) The contract may rescinded and awarded to the next lowest responsive, responsible bidder to whom the contract would have been awarded were it not for the violation of law, as applicable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]~~
 - ~~[(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.

The SPO also proposes amendments and adding a new subsection (b) to HRS §103D-707:

“(b) If the award of the contract was made in violation of law, and the award is rescinded and the contract, if executed, is terminated or declared null and void, then: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.”

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

Thank you.