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GOVERNOR



BONNIE KAHAKUI  
ACTING ADMINISTRATOR

**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  
March 23, 2022, 2:00 P.M.

SENATE BILL 3373 SD 2  
RELATING TO THE PROCUREMENT CODE

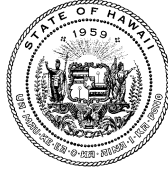
Chair Johanson, Vice Chair Kitigawa, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 3373 SD 2. The State Procurement Office (SPO) supports the intent of the bill to clarify the language regarding requirements for submitting protests.

The SPO suggest revisions to include **§103D-304**, Hawaii Revised Statutes, which may have been inadvertently left out.

Recommend that Section 1, page 1, lines 10 -17, of the bill reads as follows:

~~"A protest of an award [or proposed award] shall [in any event] be submitted in writing within five working days after the posting of award of the contract under section 103D-302, or 103D-303, or 103D-304, if no request for debriefing has been made, as applicable [; provided further that no]."~~ A protest based on the content of the solicitation shall be ~~[considered unless it is]~~ submitted in writing prior to the date set for the receipt of offers."

Thank you.



**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 CONSUMER PROTECTION & COMMERCE

March 23, 2022, 2:00 P.M.  
VIA VIDEOCONFERENCE, STATE CAPITOL

S.B. 3373 S.D. 2

RELATING TO PUBLIC PROCUREMENT

Chair Johanson, Vice Chair Kitagawa, and members of the Committee, thank you for the opportunity to submit testimony on S.B. 3373, S.D.2. The Department of Accounting and General Services (DAGS) strongly opposes this bill.

In its current form, this bill exceeds its stated intent to clarify the deadline for submitting written protests that are based on the content of a solicitation and changes the wording of Section 103D-701(a) in ways which will adversely impact the protest process. Accordingly, DAGS has the following recommendations:

- **Amend lines 7-10 as follows:**
  - Restore the words “A protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto.”

This requirement requires protestors to inform the State of issues in a timely manner from the point of solicitation through the point of award. It is always in the State's best interest to address protests as early in the procurement process as possible to minimize delays in the procurement process. In its current form, this bill would remove any incentive for bidders to submit protests prior to award. DAGS currently receives the majority of its protests prior to award.

For example:

- If an agency issues an addendum which contains information which can adversely impact the solicitation, bidders are currently required to let the State know within five days of discovering the issue.
  - If an agency notifies a bidder the apparent low bidder that its bid must be rejected and provides the justification for the rejection, removal of the time limit will increase the potential for an agency to proceed to award before receiving notification of a protest.
- Insert the words “except as provided in sections 103D-303 and 103D-304.” on line 10 after the word thereto.

The reference to sections 103D-303 and 103D-304 is important because it calls the attention of a prospective protestor to the location of the information contained in 103D-303(h) and 103D-304(k) which provide important guidance about the protest filing deadlines specific to those methods of procurement.

- Restore the words ‘[or proposed award]’ to lines 10-11.

The removal of the words “or proposed award” from lines 10-11 will prevent agencies from taking the opportunity to trigger and resolve a protest in advance of award. For example, if it is possible that an agency requires additional funding to make award, it is in the State’s best interest to be able to resolve any protests for the project before award to ensure that adequate funding can be sought.

DAGS appreciates the both the extension of the effective date to provide for further discussion, recommendations, and the opportunity to submit testimony on this matter.

# Nan Inc

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March 21, 2022

Testimony to: House of Representatives Committee on Consumer Protection & Commerce  
Chair Aaron Ling Johanson

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

Subject: S.B. 3373, SD2 – RELATING TO PUBLIC PROCUREMENT

Chair Johanson and Members of the Committee:

Nan, Inc. (“Nan”) supports S.B. 3373, SD2, which simplifies the time requirements for protest in public procurement. Currently the language in HRS § 130D-701 is vague as to when “the aggrieved person knows or should have known of the facts giving rise” to its protest. There can be no confusion that S.B. 3373, SD2 requires that a protest of an award is due within five working days after an award is made and a protest of the contents of the solicitation is due before the receipt of offers.

Previous testimony was submitted to the Committee on Government Reform by the Department of Budget and Fiscal Services and the General Contractors Association of Hawaii in opposition to S.B. 3373, SD2. Both testimonies fail to address the fact that agencies have, practically speaking, an unlimited amount of time to prepare a solicitation. Solicitations are normally hundreds of pages long and require much longer than a mere five days to read and comprehend the scope of work and the requirements necessary to perform said work. HRS § 130D-701 as it is currently written affords a bidder only five days after which a solicitation has been issued to read and comprehend the solicitation, discovery any deficiencies or defects, and then draft its well-reasoned protest to the contents of the solicitation. Additionally, this five-day limitation expires prior to any deadline to submit requests for information. The issuing agency

Chair Johanson  
S.B. 3373, SD2 – RELATING TO PUBLIC PROCUREMENT  
March 21, 2022

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should be able to hide behind the five-day limitation when a solicitation is clearly deficient, ambiguous, or unlawful. Additionally, the testimonies attempted to gaslight its members that this bill would encourage delays. In most cases it is the agency, and not the bidders, that delay the process by issuing amendments and not timely responding to requests for information.

S.B. 3373, SD2 clearly benefits both the State as well as the public, and ensures a clear, fair, and timely procurement process.

Thank you for the opportunity to provide testimony.

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# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 23, 2022

TO: HONORABLE AARON LING JOHANSON, CHAIR, HONORABLE LISA KITAGAWA, VICE CHAIR, COMMITTEE ON CONSUMER PROTECTION & COMMERCE

SUBJECT: **OPPOSITION OF S.B. 3373 SD2, RELATING TO PROCUREMENT.**  
Clarifies the deadline for submitting written protests that are based on the content of a solicitation.

HEARING

DATE: Wednesday, March 23, 2022  
TIME: 2:00 p.m.  
PLACE: Capitol Room 329

Dear Chair Johanson, Vice Chair Kitagawa 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 **opposition** of S.B. 3373 SD2, which clarifies the deadline for submitting written protests that are based on the content of a solicitation.

GCA is concerned that this version of the measure will encourage bidders to wait in the weeds while agencies go through the award vetting process only to protest within 5 days after the award. Agencies will go through the whole process of vetting a bid only to have it protested after award, whereas if it is protested 5 days after knowledge of the grounds for the protest (usually upon bid opening) most protests can be vetted early in the process.

**LATE**

**SB-3373-SD-2**

Submitted on: 3/22/2022 2:07:18 PM

Testimony for CPC on 3/23/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
AGS-Wood, Gordon	Department of Accounting and General Services	Oppose	Remotely Via Zoom

Comments:

I am available for comments.



**LATE**

**SB-3373-SD-2**

Submitted on: 3/22/2022 3:54:47 PM

Testimony for CPC on 3/23/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Audrey Hidano	Department of Accounting and General Services	Oppose	Remotely Via Zoom

Comments:

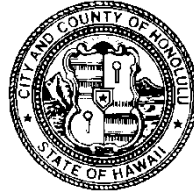
Testifying on behalf of Curt Otaguro, DAGS Comptroller, testimony submitted previously on time.

**CITY AND COUNTY OF HONOLULU**

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**LATE**

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 CONSUMER PROTECTION & COMMERCE  
**March 23, 2022, 2:00 PM, Conference Room 329 and Videoconference**

TO: The Honorable Aaron Ling Johanson, Chair  
and Members of the House Committee on Consumer Protection & Commerce

RE: OPPOSITION OF SENATE BILL 3373, SD2, RELATING TO PUBLIC  
PROCUREMENT

The Department of Budget and Fiscal Services, City and County of Honolulu (City), **opposes** Senate Bill (SB) 3373, SD2, Relating to Public Procurement.

By removing the sentence that “a protest be submitted within five working days after the aggrieved person knows or should have known of the facts giving rise thereto,” it no longer holds prospective offerors responsible to submit a protest timely, as it relates to the content of the solicitation.

A prospective offeror may have known of the facts giving rise thereto upon issuance of the solicitation, but only file the protest the day prior to the receipt of offers. This may lead to unnecessary protests, delays and increased costs associated with the procurement, especially when IFBs require a minimum 12-day posting and RFPs generally require a minimum 32-day posting. Under the proposed revision, a protest may be filed on day 31, when the content was made known on day 1.

In addition to the above, the City offers the following proposed revision:

"(a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the chief procurement officer or a designee as specified in the solicitation. ~~[Except as provided in sections 103D-303 and 103D-304, a protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a]~~ A protest of an award ~~[or proposed award]~~ shall ~~[in any event]~~ be submitted in writing within five working days after the posting of award of the contract under section 103D-302, ~~or~~ 103D-303, or 103D-304 if no request for debriefing has been made, as applicable~~;~~ ~~provided further that no].~~ A protest based upon the

content of the solicitation shall be ~~considered unless it is~~ submitted in writing prior to the date set for the receipt of offers."

For the reasons stated above, the City respectfully opposes Senate Bill 3373, SD2.

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](mailto:bfspurchasing@honolulu.gov).