

JOSH GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA



BONNIE KAHAKUI  
ACTING ADMINISTRATOR

**STATE OF HAWAI'I | KA MOKU'ĀINA O HAWAI'I**  
**STATE PROCUREMENT OFFICE**

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TESTIMONY  
OF  
BONNIE KAHAKUI, ACTING ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE  
ON  
LABOR & GOVERNMENT OPERATIONS  
FEBRUARY 9, 2023, 9:30 AM

HOUSE BILL 816  
RELATING TO PUBLIC PROCUREMENT

Chair Matayoshi, Vice Chair Garrett, and members of the committee, thank you for the opportunity to submit testimony on House Bill 816. The State Procurement Office's (SPO) comments are as follows.

HB 816 amends Section 103D-701, Hawaii Revised Statutes, to clarify the deadline for submitting written protests that are based on the content of a solicitation. However, the proposed language in HB 816 will cause confusion.

Section 103D-701, Hawaii Revised Statutes, already states that 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 further that no 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.

HB 816 states that a protest based upon the content of the solicitation shall be submitted in writing within five working days after the due date for the **request for information**, if none was submitted, or after response of all timely submitted **requests for information**, if **requests for information** were timely submitted and no later than prior to the receipt of offers.

The definition of "Request for information" (RFI) in Section 3-122-1, Hawaii Administrative Rules, is a request seeking information to obtain recommendations from suppliers for a procurement that cannot be described in sufficient detail in preparation of a solicitation. A Request for Information is done prior to the release of a solicitation and any information

gathered as a result of responses to an RFI may or may not be included in solicitation. The “Request for information” in HB 816 seems to imply “questions that require responses”. This difference in the “request for information” definition is confusing. Furthermore, not all solicitations have a due date for “questions” or require “request for information”.

It is not necessary to amend Section 103D-701, Hawaii Revised Statutes, through HB 816, to clarify the deadline for submitting written protests that are based on the content of a solicitation. This will raise questions and cause confusion.

Thank you.

JOSH GREEN, M.D.  
GOVERNOR



**TESTIMONY BY:**  
EDWIN H. SNIFFEN  
DIRECTOR  
  
Deputy Directors  
DREANALEE K. KALILI  
TAMMY L. LEE  
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JAMES KUNANE TOKIOKA

**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

Thursday, February 9, 2023  
9:30 A.M.  
VIA VIDEOCONFERENCE  
State Capitol  
Conference Room 309

**H.B. 816**  
**RELATING TO PUBLIC PROCUREMENT**

House Committee on Labor & Government Operations

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The Department of Transportation (DOT) **offers comments** to the bill amending Section 103D-701, Hawaii Revised Statutes, subsection (a), clarifying a protest based upon the content of the solicitation shall be submitted in writing within five working days after the due date for the request for information, if none was submitted; or after response of all timely submitted requests for information, if requests for information were timely submitted, and no later than prior to the receipt of offers.

The proposed provision for protests based on the content of the solicitation, prior to bid opening, will allow the agency to promptly address, rectify, and revise specifications accordingly that may be inadvertently faulty at the time of advertisement. Further, with the opportunity to correct any offending provision in the specification documents with more clear, unambiguous, and accurately detailed language, to the best extent possible, prospective bidders will have a better opportunity to prepare their respective bids appropriately and responsively to the solicitation criteria.

Thank you for the opportunity to provide testimony.



February 9, 2023

TO: HONORABLE SCOT MATAYOSHI, CHAIR, HONORABLE ANDREW GARRETT, VICE CHAIR, COMMITTEE ON LABOR & GOVERNMENT OPERATIONS

SUBJECT: **OPPOSITION OF H.B. 816, RELATING TO PUBLIC PROCUREMENT.**  
Clarifies the deadline for submitting written protests that are based on the content of a solicitation.

HEARING

DATE: Thursday, February 9, 2023  
TIME: 9:30 a.m.  
PLACE: Capitol Room 309

Dear Chair Matayoshi, Vice Chair Garrett 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 H.B. 816, 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

Thank you for the opportunity to provide comments on this measure.

# Nan Inc

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Honolulu, Hawaii 96819  
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Facsimile: (808) 841-8281

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February 8, 2023

Testimony to: House of Representatives Committee on Labor & Government Operations  
Chair Scot Z. Matayoshi  
Vice Chair Andrew Takuya Garrett

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

Subject: H.B. No. 816 – RELATING TO PUBLIC PROCUREMENT

Chair Matayoshi, Vice Chair Garrett, and Members of the Committee:

Nan, Inc. (“Nan”) supports H.B. No. 816, which clarifies the time requirements for protest related to 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. For protest based on the content of the solicitation, this required prospective bidders to review hundreds of pages of solicitation documents and submit a protest within five days after bid opening. This is not feasible. Additionally, we have experienced agencies denying protest on the basis that bidders are not considered aggrieved because award has not been made. We have seen sometimes the same agency denying protests because the bidder did not protest five days after bid opening, when they knew or should have known that they were aggrieved. Clearly defining when a protest should be submitted should alleviate many of these issues. This will expedite the review process and reduce the cost associated with protest.

H.B. 816 requires that a protest based on the content of the solicitation shall be submitted within five working days after the date for the request for information, if none was submitted or after response of all timely submitted requests for information, if requests for information were timely submitted and no later than prior to the receipt of offers. This allows for prospective

House Committee on Labor & Government Operations  
H.B. No. 816 – RELATING TO PUBLIC PROCUREMENT  
February 8, 2023

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bidders to properly review all of the solicitation documents and ask any questions if necessary.

The agency would have the opportunity to address these issues.

A protest based on an award, or an eventual award, should be made five working days after the posting of award. This would allow the procuring agency to review all the bids and make an award. The procuring agency could resolve any deficiencies on their own without the need to resolve a protest. Protests would be due five days after award.

H.B. 816 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.