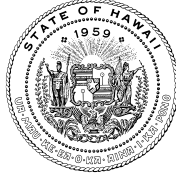


JOSH GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA



KEITH A. REGAN  
COMPTROLLER  
KA LUNA HO'OMALU HANA LAULĀ

MEOH-LENG SILLIMAN  
DEPUTY COMPTROLLER  
KA HOPE LUNA HO'OMALU HANA LAULĀ

**STATE OF HAWAII | KA MOKU'ĀINA O HAWAII'**  
**DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES | KA 'OIHANA LOIHELU A LAWELAWE LAULĀ**  
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY  
OF  
KEITH A. REGAN, COMPTROLLER  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
TO THE

COMMITTEE ON GOVERNMENT OPERATIONS

FEBRUARY 14, 2023, 3:10 PM  
CONFERENCE ROOM 225 & VIDEO CONFERENCE

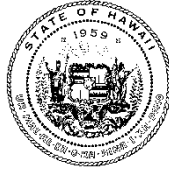
S.B. 1441

RELATING TO PUBLIC PROCUREMENT

Chair McKelvey, Vice Chair Gabbard, and Members of the Committee, thank you for the opportunity to submit comments on Senate Bill (S.B.) 1441, which intends to clarify the deadline for submitting written protests based on the content of a solicitation.

The Department of Accounting and General Services (DAGS) supports the State Procurement Office's testimony on this measure and companion House Bill 816 and we defer to the State Procurement Office.

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



**STATE OF HAWAII | KA MOKU'ĀINA O HAWAII**  
**STATE PROCUREMENT OFFICE**

P.O. Box 119  
Honolulu, Hawaii 96810-0119  
Tel: (808) 586-0554  
email: [state\\_procurement\\_office@hawaii.gov](mailto:state_procurement_office@hawaii.gov)  
<http://spo.hawaii.gov>

TESTIMONY  
OF  
BONNIE KAHAKUI, ACTING ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE  
ON  
GOVERNMENT OPERATIONS  
FEBRUARY 14, 2023, 3:10 PM

SENATE BILL 1441  
RELATING TO PUBLIC PROCUREMENT

Chair McKelvey, Vice Chair Gabbard, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 1441. The State Procurement Office's (SPO) comments are as follows.

SB 1441 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 SB 1441 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.

SB 1441 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 SB 1441, 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.



February 14, 2023

TO: HONORABLE ANGUS L.K. MCKELVEY, CHAIR, HONORABLE MIKE GABBARD, VICE CHAIR, COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **OPPOSITION OF S.B. 1441, RELATING TO PUBLIC PROCUREMENT.**  
Clarifies the deadline for submitting written protests that are based on the content of a solicitation.

HEARING

DATE: Tuesday, February 14, 2023  
TIME: 3:10 p.m.  
PLACE: Capitol Room 415

Dear Chair McKelvey, Vice Chair Gabbard 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. 1441, 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 testify in opposition to this measure.

JOSH GREEN, M.D.  
GOVERNOR



**TESTIMONY BY:**  
EDWIN H. SNIFFEN  
DIRECTOR

Deputy Directors  
DREANALEE K. KALILI  
TAMMY L. LEE  
ROBIN K. SHISHIDO  
JAMES KUNANE TOKIOKA

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

Tuesday, February 14, 2023  
3:10 P.M.

Conference Room 225 & Videoconference  
State Capitol



**S.B. 1441**  
**RELATING TO PUBLIC PROCUREMENT**

Senate Committee on 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 procurement code allows for protests prior to the receipt of offers. Requests for information, or inquiries when timely submitted are responded to through Addenda, clarifying language in the solicitation prior to the receipt of offers.

Thank you for the opportunity to provide testimony.