



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
<http://spo.hawaii.gov>

TESTIMONY
OF
BONNIE KAHAKUI, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEES
ON
WAYS AND MEANS
AND
JUDICIARY
APRIL 1, 2025, 10:00 A.M.

HOUSE BILL 1297, HD1 SD1
RELATING TO PROCUREMENT

Chair Dela Cruz, Chair Rhoads, Vice Chair Moriwaki, Vice Chair Gabbard, and members of the committees, thank you for the opportunity to submit testimony on House Bill 1297, HD1 SD1.

The State Procurement Office (SPO) safeguards procurement integrity while providing an outlet to question procurement practices, fostering continuous improvement and accountability. Procurement challenges often lead to project delays, lapsing funds, and increased project costs. A bid protest bond serves as a safeguard, providing a financial guarantee to deter frivolous protests and uphold the integrity of the procurement process. For these reasons, the SPO supports the intent of this bill and provides comments and recommendations.

The SPO supports the following language in the following sections:

- Section 1, page 1, line 17, and page 2, lines 1-2, which requires protests to be submitted “at least twenty-four hours prior to the date and time set for the receipt of offers.” This gives agencies time to respond to the protest and allows for corrective action before the solicitation closes.
- Section 1, page 2, line 13, which sets a 75-day limit for issuing a written decision on protests apply to any contract awarded by competitive sealed bid or competitive sealed proposal.
- Section 2, page 3, lines 6-7, which caps the protest bond amount at \$1,500,000.

The SPO recommends the deletion of language in Section 2, page 3, lines 13-15, as noted below:

“ ... provided that full forfeiture of the cash or protest bond shall occur if the initiating party does not prevail in the administrative proceeding and [~~the office of administrative hearing finds that the appeal was frivolous or made in bad faith, in which case~~] the cash or protest bond shall be deposited into the general fund.”

The revised language would prevent vendors from unjustifiably using the protest process to delay the solicitation, and ultimately the project, without consequences.

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



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF TRANSPORTATION | KA 'OIHANA ALAKAU
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

April 1, 2025
10:00 a.m.
State Capitol
Conference Room 211 & Videoconference

H.B. 1297 H.D. 1, S.D. 1
RELATING TO PROCUREMENT

The Senate Committee on Ways and Means and
Committee on Judiciary

The Department of Transportation (DOT) supports this bill that sets a time limit of 24 hours prior to the date and time set for the receipt of offers when protesting on the content of the solicitation. Makes a 75-day limit for written decision on protests to apply to any contract awarded by competitive sealed bid or competitive sealed proposal. Caps the protest bond amount; and deletes the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party.

The DOT has implemented the 75-day limit written decision response to all protests, since passage of the 75 days requirement, and internally aspires to respond in 45 days, and therefore supports the application of the time deadline to apply to all protests. The DOT supports the proposed statutory revision requiring at least 24 hours' notice, prior to the receipt of offers for protests based on the contents of a solicitation. This change allows the DOT time to issue an addendum to amend the solicitation and if needed, provides the time to postpone the bid opening should more time be needed for offerors to review the changes, ensuring that the State receives and the bidders provide, a complete and correct bid.

The DOT supports the \$1,500,000 protest bond cap. When a protest is received and the immediate stay of procurement goes into effect, the impacted project comes to a halt. Timelines to start and proceed, along with potential cost escalation to budget now come into play, adversely affecting the project and its scheduled completion. In the event the protest is appealed to administrative hearing and, with the possibility of further escalation, the more significant and critical the impact of these factors to the project.

With the decision to appeal, there should be an inherent and recognized responsibility that the protestor's decision to appeal was given due consideration, and the protestor is fully committed to furthering the protest matter. The protest bond is a means of securing this commitment.

The protestor shall appreciate the impact of the appeal if the decision to appeal is the elected option. By securing a cash or protest bond, payable upon receipt, all parties acknowledge the conviction and commitment to proceed. The appeal is an opportunity for all parties to present their position, reviewed by an impartial party, with the assurance of an appropriate decision toward protest resolution in order to complete public works projects in the best interest of the State and taxpayers.

Moreover, the DOT has experienced forty to sixty percent construction cost increases from 2021 to 2024, with the national average of the same period to be fifty-six percent increase in construction costs. Some DOT project estimates are in the \$170,000,000 to \$250,000,000 range and therefore, the \$1,500,000 protest bond would be an equitable cap considering construction cost increases.

Thank you for the opportunity to provide testimony.

We are in opposition to this based on the amount of \$1,500,000.00 as stated on page 3, lines 6-7.

Given the wide range of projects that are undertaken by the State and Counties, we find it extremely difficult to endorse a "one size fits all maximum" approach when jobs range from a few hundred thousand dollars to many millions of dollars.

We believe that the State and the Counties should readily endorse the protest provisions inasmuch as it is, in fact, private industry doing the work of government to alert situations that may not be in compliance with the procurement laws.

As to the amount, it should be noted that projects in the higher ranges (\$15M), this would be a bond of \$1,500,000.00. That is quite a gamble considering the intricacies and "in and outs" of administrative proceedings particularly in the case of where the initiating party does not prevail.

In summary, the only real opposition to this bill is the cap for the maximum bond which if placed too high puts a real disincentive on industry helping government to determine errors in the procurement procedure.

It should be understood that placing this bond draws down on the contractors' operational credit when those dollars could be better used to secure additional jobs.

Based on the above we would respectfully request some moderation of the cap or maximum bond.

Thank you.



April 1, 2025

TO: HONORABLE DONOVAN DELA CRUZ, CHAIR, HONORABLE SHARON MORIWAKI, VICE CHAIR, AND MEMBERS OF THE COMMITTEE ON WAYS AND MEANS. HONORABLE KARL RHOADS, CHAIR, HONORABLE MIKE GABBARD, VICE CHAIR, COMMITTEE ON JUDICIARY.

SUBJECT: **SUPPORT OF H.B. 1297 HD1 SD1, RELATING TO PROCUREMENT.** Sets a time limit for submitting bid protests. Makes the seventy-five-day limit for issuing a written decision on protests apply to any contract awarded by competitive sealed bid or competitive sealed proposal. Caps the protest bond amount.

HEARING

DATE: Tuesday, April 1, 2025
TIME: 10:00 a.m.
PLACE: Capitol Room 211

Dear Chair Dela Cruz, Vice Chair Moriwaki, Chair Karl Rhoads, Vice Chair Mike 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 **Supports** H.B. 1297 HD1 SD1, which sets time limit for submitting bid protests, makes the seventy-five-day limit for issuing a written decision on protests apply to any contract awarded by competitive sealed bid or competitive sealed proposal and caps the protest bond amount.

GCA originally opposed this measure as introduced because it would have repealed ethical safeguards within the procurement code that other states use that the legislature passed last year through ACT 162 (2024). The legislature passed the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party last year in an effort to strengthen procurement ethics.

However, since that language has been amended to retain the language of ACT 162 (2024), GCA can support this measure.

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

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 LAWELAWÉ LAULĀ
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

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

**WAYS AND MEANS
JUDICIARY**

APRIL 1, 2025, 10:00 A.M.
CONFERENCE ROOM 211 AND VIA VIDEOCONFERENCE, STATE CAPITOL

H.B. 1297, H.D.1, S.D. 1

RELATING TO PROCUREMENT

Chairs Dela Cruz and Rhoads, Vice Chairs Moriwaki and Gabbard, and Members of the Committees, thank you for the opportunity to submit testimony on H.B. 1297, H.D. 1, S.D. 1.

The Department of Accounting and General Services (DAGS) supports the intent of this measure and offers the following **comments**:

- It provides the State with at least 24 hours notice, prior to the receipt of offers, of protests based on the contents of a solicitation. This provides the State with a minimum of 24 hours to issue an addendum postponing the bid opening in accordance with the stay on procurement invoked by a protest and is in the best interest of both the State and its offerors.

- We note the current version of this measure restores the requirement that the administrative hearing office must find that an appeal was frivolous or in bad faith before the protest bond is forfeited to the State by initiating parties who do not prevail in the administrative proceeding.
 - This requirement makes it very difficult, if not impossible, for the State to collect the protest bond from protestors who do not prevail in the administrative hearing and is contrary to the intent of the requirement for the filing of a protest bond.
 - Removal of this requirement, which was proposed by a prior version of this measure would work to ensure that protestors file appeals which are based on strong arguments that the agency erred in denying the protest.
- Therefore, the department respectfully requests that the requirement that the administrative hearing office must find that an appeal was frivolous or in bad faith before the protest bond is forfeited to the State by initiating parties who do not prevail in the administrative proceeding be removed should this measure move forward.

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