



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 HOUSE COMMITTEE
ON
FINANCE
FEBRUARY 26, 2025, 10:50 A.M.

HOUSE BILL 1297
RELATING TO PROCUREMENT

Chair Yamashita, Vice Chair Takenouchi, and members of the committee, thank you for the opportunity to submit testimony on House Bill 1297. The State Procurement Office (SPO) supports the intent of this bill and provides the following comments and recommendations

The SPO encourages procurement integrity, as well as supporting an outlet to question procurement practices in an effort to constantly improve. Procurement bid challenges often result in project delays, lapsing funds, and project cost increases. Protests frequently involve complex issues and to meet strict deadlines may cause government agencies to rush to resolve protests, which could result in errors in judgment.

The SPO supports the language in 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.

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

"... 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 SPO recommends the following changes to Section 2, page 3, lines 6-7:

§103D-709 Administrative proceedings for review. (e) "...provided that the amount of the bond shall not exceed \$1,000,000."

Thank you for the opportunity to submit 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 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 FINANCE

FEBRUARY 26, 2025, 10:50 P.M.
CONFERENCE ROOM 308 AND VIA VIDEOCONFERENCE, STATE CAPITOL

H.B. 1297

RELATING TO PROCUREMENT

Chair Yamashita, Vice Chair Takenouchi, and Members of the Committee, thank you for the opportunity to submit testimony on H.B. 1297.

The Department of Accounting and General Services (DAGS) **supports** this bill for the following reasons:

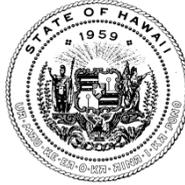
- It provides the State with at least 24 hours notice, prior to the receipt of offers, of protests based on the contents of a solicitation. This provides the State with a minimum of 24 hours to issue an addendum postponing the bid opening in accordance with the stay on procurement invoked by a protest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

- The existing 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 also works to ensure that protestors file appeals which are based on strong arguments that the agency erred in denying the protest.

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

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



EDWIN H. SNIFFEN
DIRECTOR
KA LUNA HO'OKELE

Deputy Directors
Nā Hope Luna Ho'okele
DREANALEE K. KALILI
TAMMY L. LEE
CURT T. OTAGURO
ROBIN K. SHISHIDO

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

February 26, 2025
10:50 a.m.
State Capitol
VIA VIDEOCONFERENCE
Conference Room 308

H.B. 1297
RELATING TO PROCUREMENT

The House Committee on Finance

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 protest 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.

This bill provides the State with at least 24 hours' notice, prior to the receipt of offers, of protests based on the contents of a solicitation. The State, with a minimum of 24 hours, may issue an addendum to amend the solicitation and if needed, provide the time to postpone the bid opening if more time is needed for the offeror to review the changes, ensuring that the State receives, and the bidder provides a complete and correct bid.

The DOT proposes the following changes to Section 2, page 3, lines 6-7: §103D-709 Administrative proceedings for review. (e) "...provided that the amount of the bond shall not exceed \$1,000,000."

Thank you for the opportunity to provide testimony.



February 26, 2025

TO: HONORABLE KYLE YAMASHITA, CHAIR, HONORABLE JENNA TAKENOUCHI, VICE CHAIR, COMMITTEE ON FINANCE.

SUBJECT: **OPPOSITION TO H.B. 1297, RELATING TO PROCUREMENT.** Sets time limit for submitting bid protests. Makes 75 day limit for written decision on protest apply to any contract awarded by competitive sealed bid or competitive sealed proposal. Caps the protest bond amount. 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.

HEARING

DATE: Wednesday, February 26, 2025
TIME: 10:50 a.m.
PLACE: Capitol Room 308

Dear Chair Yamashita, Vice Chair Takenouchi 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 **Opposes** H.B. 1297, which sets time limit for submitting bid protests. Makes 75 day limit for written decision on protest apply to any contract awarded by competitive sealed bid or competitive sealed proposal. Caps the protest bond amount. 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 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.

The Legislature inserted this safeguard language that the other states who require cash or protest bonds without a cap use for appeals to also prevent the chilling effect of deterring legitimate protests on large projects. This provision ensures a balance that deters frivolous appeals without the unintended consequence of also deterring legitimate appeals on large projects.

Prior to this language being adopted last year, a 2013 NASPO study found only seven (7) out of fifty states require a protest bond of some sort. This includes Hawaii. Of these seven states, **Hawaii was the ONLY state that imposed immediate forfeiture of the bond to the State's general fund if a protestor loses an appeal.** Every one of the other six states that



**GENERAL
CONTRACTORS
ASSOCIATION
OF HAWAII**

imposed a bond requirement, only required either partial forfeiture to pay for costs, or forfeiture under certain conditions, most often a frivolous or bad faith protest.

The Hawaii Revised Statutes and Hawaii Rule of Civil Procedure outline what constitutes a frivolous lawsuit. Similarly, California has precedent on determining frivolousness in protest appeals. Typically, an appeal that lacks legal merit, is based on clearly unfounded facts, or is brought primarily to harass another party is considered frivolous.

The GCA appreciates that the measure attempts to restore some ethical safeguards by restoring the bond cap. However, the GCA believes that it will be extremely difficult to determine an amount that is just high enough to deter frivolous appeals while being low enough to not deter legitimate appeals.

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