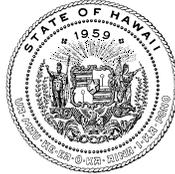


JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



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

MARCH 18, 2025, 3:05 P.M.
CONFERENCE ROOM 225 AND VIA VIDEOCONFERENCE, STATE CAPITOL

H.B. 988, H.D. 1

RELATING TO PROCUREMENT

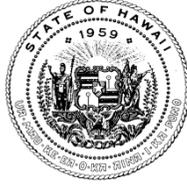
Chair McKelvey, Vice Chair Gabbard, and Members of the Committee, thank you for the opportunity to submit testimony on this measure.

The Department of Accounting and General Services (DAGS) strongly **supports** H.B. 988, H.D. 1 which prohibits a procurement officer from disclosing a competing offeror's proposal or evaluation score, except the summary of scores, during a debriefing requested by a non-selected offeror and authorizes the disclosure of a competing proposal or evaluation score after a protest is resolved and the contract is executed.

H.B. 988, H.D. 1 is a DAGS administrative measure which provides clear guidance to purchasing agencies on what shall not be disclosed at a debriefing.

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

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



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

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

March 18, 2025
3:05 p.m.
State Capitol
Conference Room 225 & Videoconference

**H.B. 988 H.D. 1
RELATING TO PROCUREMENT**

The Senate Committee on Government Operations

The Department of Transportation (DOT) **supports** the bill that prohibits a procurement officer from disclosing a competing offeror's proposal or evaluation score, except the summary of scores, during a debriefing requested by a non-selected offeror; and authorizes the disclosure of a competing offeror's proposal or evaluation score after any protest is resolved and the contract is executed.

Public disclosure of competing proposals — involving proprietary and other confidential information, such as trade secrets and confidential commercial and financial data — prior to final contract execution could foreseeably give an unfair competitive advantage to other proposers in the event discussions were to break down. Concern over this risk could cause proposers to offer up deliberately vague plans or decline to submit proposals altogether. The likely result would be fewer submissions and an increase in the cost of government procurements.

Thank you for the opportunity to provide testimony.

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



BONNIE KAHAKUI
ADMINISTRATOR

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

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 586-0554
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TESTIMONY
OF
BONNIE KAHAKUI, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
GOVERNMENT OPERATIONS

MARCH 18, 2025; 3:05 p.m.

HOUSE BILL 988, HD1
RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Gabbard, and members of the committee, thank you for the opportunity to submit testimony on House Bill 988, HD1. The State Procurement Office (SPO) strongly supports this bill as it provides clear guidance to purchasing agencies what shall not be disclosed at a debriefing.

The purpose of a debriefing is to explain the purchasing agency's overall ranking of all proposals and provide a summary of the rationale for award(s). During the debriefing, the Procurement Officer shall provide any significant weaknesses or deficiencies in the proposal against the solicitation criteria. The debriefing should not include point-by-point comparisons of the debriefed proposal against those of other offerors.

In order to protect the integrity and fairness of the procurement process, non-disclosure up to the point of contract execution would allow any protest decision by the State Department of Commerce and Consumer Affairs' Office of Administrative Hearings (OAH) to move forward. For example, if the OAH requires the agency to re-evaluate the proposals, and if the proposals were already disclosed at a debriefing, the proposals are no longer "sealed proposals" and the procurement would be compromised.

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

DEPARTMENT OF BUDGET AND FISCAL SERVICES
KA 'OIHANA MĀLAMA MO'OHELU A KĀLĀ
CITY AND COUNTY OF HONOLULU

530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • WEBSITE: honolulu.gov/budget

RICK BLANGIARDI
MAYOR
MEIA



ANDREW T. KAWANO
DIRECTOR
PO'O

CARRIE CASTLE
DEPUTY DIRECTOR
HOPE PO'O

March 17, 2025

The Honorable Angus L.K. McKelvey, Chair
The Honorable Mike Gabbard, Vice-Chair
and Members of the Committee on Government Operations
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair McKelvey, Vice-Chair Gabbard and Committee Members:

SUBJECT: Testimony on House Bill 988 HD1, Relating to Procurement
Hearing: March 18, 2025, 3:05 p.m., Conference Room 225 and
Videoconference

The Department of Budget and Fiscal Services, City and County of Honolulu ("City"), **offers comments on** House Bill ("HB") 988 HD1, Relating to Procurement.

The City supports the proposed change that outlines what may be disclosed in an RFP debriefing. However, the City does not support **when** certain information should be disclosed and requests the following change to be made:

"Thereafter, the procurement officer shall provide the non-selected offeror a prompt debriefing, but shall not disclose any competing offeror's proposal or evaluation score, except the summary of scores, until ~~after any protest is resolved and the contract is~~ awarded executed."

HRS 103D-701 states that "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, if no request for debriefing has been made..."

Non-selected offerors may submit a written request for debriefing to the procurement officer within three working days after the **posting of the award** of the contract. If a debriefing is held, "[a]ny protest by the non-selected offeror pursuant to

The Honorable Angus L.K. McKelvey, Chair
The Honorable Mike Gabbard, Vice-Chair
and Members of the Committee on Government Operations
March 17, 2025
Page 2

section 103D-701 following debriefing shall be filed in writing with the procurement officer within five working days after the date upon which the debriefing is completed." Hawai'i Administrative Rules Section 3-122-9.01 allows for the disclosure of an offer upon the **posting of an award** in the case of an RFP procured under HRS 103D-303.

HRS 103D-701 also states that an offeror may protest within 5 working days after an aggrieved party knows or should have known of the facts giving rise thereto. Withholding a competing offeror's proposal or the details of an evaluation score introduces another point in time to which a protest may be submitted, if a party feels aggrieved by the disclosure of such information being released after contract execution.

For the reason stated above, the City offers comments on House Bill 988 HD1.

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.

Sincerely,



Andrew T. Kawano
Director

APPROVED:



Michael D. Formby, Managing Director
Office of the Managing Director



March 18, 2025

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

SUBJECT: **COMMENTS ON H.B. 988 HD1, RELATING TO PROCUREMENT.**
Prohibits a procurement officer from disclosing a competing offeror's proposal or evaluation score, except the summary of scores, during a debriefing requested by a non-selected offeror. Authorizes the disclosure of a competing offeror's proposal or evaluation score after a protest is resolved and the contract is executed.

HEARING

DATE: Tuesday, March 18, 2025
TIME: 3:05 p.m.
PLACE: Capitol Room 225

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 **Comments** on H.B. 988 HD1, which prohibits a procurement officer from disclosing a competing offeror's proposal or evaluation score, except the summary of scores, during a debriefing requested by a non-selected offeror. Authorizes the disclosure of a competing offeror's proposal or evaluation score after a protest is resolved and the contract is executed.

The current law and Procurement Policy Board implementing rules already prohibit the sharing of proprietary information designated by an offeror as confidential trade secrets or other proprietary data. HAR Title 3, Subtitle 11, Chapter 122, Subchapter 6, §3-122-58(a). Challenges to an offeror's confidentiality designations are available pursuant to subsequent subsections §3-122-58(b), (c) & (d). The debriefing process with protest deadlines is detailed in subsections §3-122-60. GCA suggests that the State Procurement Office send out a memo to the agencies reminding them not to share competing offeror's proposals designated confidential trade secrets or proprietary information pursuant to 3-122-58 (applicable to Competitive Sealed Proposals) as made applicable to Multi-Step Competitive Sealed Bidding pursuant to subsection §3-122-61.07.

This measure will hamper competing offerors from challenging unfair treatment of competing offerors if the bidder is unable to analyze how other bids were scored until after the protest deadline has passed.