

DAVID Y. IGE
GOVERNOR



BONNIE KAHAKUI
ACTING ADMINISTRATOR

STATE OF HAWAII
STATE PROCUREMENT OFFICE

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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
GOVERNMENT OPERATIONS
FEBRUARY 4, 2021, 3:00PM

SB1329
RELATING TO PROCUREMENT

Chair Moriwaki, Vice-Chair Dela Cruz, and members of the committee, thank you for the opportunity to submit testimony on SB1329. The State Procurement Office (SPO) supports the intent of the bill with the following comments:

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. The pressure to meet strict deadlines may cause government agencies to rush to resolve protests, which could result in errors in judgment. It is difficult to create a "one-size-fits-all" time limit to resolve protests. More data is required to better understand the challenges agencies encounter and how they respond to protests.

Thank you.

DAVID Y. IGE
GOVERNOR



CURT T. OTAGURO
COMPTROLLER
AUDREY HIDANO
DEPUTY COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

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

WRITTEN TESTIMONY
OF
CURT T. OTAGURO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
COMMITTEE ON GOVERNMENT OPERATIONS

THURSDAY, FEBRUARY 4, 2021, 3:00 P.M.
CONFERENCE ROOM 016, STATE CAPITOL

S.B. 1329

RELATING TO PROCUREMENT

Chair Moriwaki, Vice Chair Dela Cruz, and members of the Committee, thank you for the opportunity to submit testimony on S.B. 1329.

The Department of Accounting and General Services (DAGS) opposes S.B. 1329, and we offer the following:

- 1) Allowing the chief procurement officer the ability to direct any agency to resolve a protest that is not its own would introduce a large degree of inefficiency to the protest process; and
- 2) Placing an artificial time limit on the resolution of protests would send the message that a quick resolution is more important than a fair, well considered one.

The proposed language of S.B. 1329 allows the chief procurement office or a designee to direct a third-party agency for review and preparation of findings. DAGS recommends against such a practice because:

- Referring the protest to another department or agency for review and findings will require considerable time on the part of the originating department or agency to gather and provide all the pertinent background information. It also increases the chance of an incomplete transfer of information which may be critical to the evaluation process, because the originating agency would not necessarily be able to identify such information at that stage in the process.
- Addressing a protest requires thorough knowledge of the solicitation requirements. This would require considerable time on part of the reviewing agency if it is to provide findings that are not incomplete or erroneous. Introducing a third party into the process thus guarantees that it will take longer than it otherwise would because the third party must become as familiar with the details of the procurement documents as the agency that produced the documents. Therefore, this legislation would, contrary to its purported intent, lengthen the process and create inefficiencies which do not currently exist.
- Lack of familiarity with the requirements of the solicitation combined with the added pressure of arbitrary time constraints also increases the chance of erroneous findings, thereby increasing the chance that a larger number of protests will be taken to administrative hearing, and further increasing the burden on both the protestor and the state.

This legislation also assumes that the third-party agency selected by the CPO has the resources to handle additional protests, which is not likely given the current economy. Bid protests for construction procurements can be very complex technically and legally as they are both case- and project- specific, requiring interpretation of the solicitation requirements,

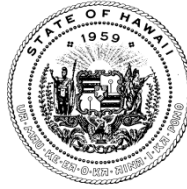
procurement code, and contractor licensing issues. In addition, care must be exercised to ensure that the outcome is consistent with an agency's prior decisions and is fair to other bidders, again, this requires the application of considerable time and other resources. Arbitrarily limiting the time afforded to equitably resolve the issues involved shifts the focus of the protest process from obtaining a fair and just resolution to obtaining a quick one. Any action that minimizes the importance of a fair procurement process is not in the best interest of the public and the State because it erodes public trust in the process.

Hawaii Administrative Rules (HAR) §3-126-4(a) provides for a bidder to submit its protest in writing to the chief procurement officer or as otherwise specified in the solicitation for solicitations pursuant to 103D-302 – Competitive Sealed Bids and 103D-303 – Competitive Sealed Proposals. The Department of Accounting and General Services, Public Works Division (DAGS-PWD) follows this efficient practice, which provides for resolution of bid protests in a method that is as timely and cost-sensitive as is necessary to achieve equitable outcomes. To change this method as proposed by this bill will not be in the best interest of the people of Hawaii.

In summary, this legislation: 1) will require increased expenditure of resources and time than are currently expended to equitably resolve bid protests, which is antithetical to effective and efficient government; and 2) makes the importance of a fair and just resolution less important than a quick resolution.

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

DAVID Y. IGE
GOVERNOR



LATE

TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

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

February 4, 2021
3:00 P.M.
State Capitol
Conference Room 016
VIA VIDEO CONFERENCE

S.B. 1329
RELATING TO PROCUREMENT

Senate Committee on Government Operations

The Department of Transportation (DOT) **supports** the intent of the bill which creates time limits to resolve protests to the awards of competitive sealed proposal contracts and procurements of professional services.

Bid protests can be lengthy, case-by-case, and specific to the nature of the protest and scope of project and may impact project timelines. However, realistic time guidelines need to be in place to support thorough, quality vetting and response to the respective protests to ensure expediting the resolution does not compromise a fair and just resolution. Timely resolution benefits both the State as well as the public; however, care must be taken to ensure diligence in final resolution.

Thank you for the opportunity to provide testimony.

SAH - Subcontractors Association of Hawaii

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February 4, 2021

Testimony To: Senate Committee on Government Operations
Senator Sharon Y. Moriwaki, Chair

Presented By: Tim Lyons, President

Subject: S.B. 1329 – RELATING TO PROCUREMENT

Chair Moriwaki and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The SAH represents the following nine separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL AND AIR CONDITIONING NATIONAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

The time constraints to resolve protests have been the subject of a great deal of discussion.

We don't know what the magic number of days is however we concur with the intent of this bill, to move protests along so jobs can be completed. To that extent we can support the bill but reserve comment until the number of days is proposed.

Thank you.



Malcolm Barcarse, Jr.
A&B Electric Co., Inc.
Chairman

Kathryn Mashima
Mashima Electric
Chairman Elect

Ross Kawano
ECA, LLP
Treasurer/Secretary

Jarrett Walters
Hawaiian Building
Maintenance

Canaan Shon
Hawaii Geophysical Services

Ralph Sakauye
Bora, Inc.

Kevin Schmid
Oceanic Companies, Inc.



Geoffrey Chu
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February 4, 2021

To: Committee on Government Operations
Sen. Shannon Y. Moriwaki, Chair
Sen. Donovan M. Dela Cruz, Vice Chair

From: Malcolm Barcarse, Jr. ABC Hawaii Board Chair.

Associated Builders and Contractors Hawaii Chapter testimony **Supporting the Intent of SB 1329.**

Chair Moriwaki, Vice Chair Dela Cruz and members of the Committee:

Thank you for the opportunity to testify, my name is Malcolm Barcarse, Jr. I am currently the Chair of Associated Builders and Contractors, Hawaii Chapter which represents over 170 member companies in the Construction Industry. We also have a State Approved Trade Apprenticeship Program in the trades of Carpentry, Electrical, Painting, Plumbing and Roofing.

Our membership regularly submits bids on public works projects for State and County agencies. We have also seen over the years how the laws regarding bid protests have evolved where strict deadlines have been placed on the Office of Administrative Hearings and the Circuit Court to dispose of cases, along with the requirement of contractors to put up protest bonds before initiating an appeal to the Office of Administrative Hearings. These provisions appear to have done a good job of filtering out cases that get appealed to OAH unnecessarily.

Despite these efforts the one missing piece to the bid protest puzzle is the unlimited time that the agencies have to make a decision on whether to sustain or deny a protest. Therefore we believe that SB 1329 is a step in the right direction and supports the intent of this bill to set deadlines on the agencies to move these protests along in a timely manner. If the goal is to prevent delays in public works projects moving the process along in this way will have a more immediate impact than putting additional restrictions on the OAH process or moving to restrict or repeal bidding preferences. ABC Hawaii looks forward to working with the Legislature and the relevant stakeholders to improve the public works procurement system.

Thank you for the opportunity to testify