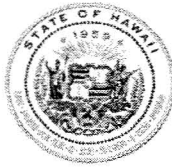


LINDA LINGLE  
GOVERNOR



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ADMINISTRATOR

**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

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Honolulu, Hawaii 96810-0119  
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**TESTIMONY  
OF  
AARON S. FUJIOKA  
ADMINISTRATOR  
STATE PROCUREMENT OFFICE**

**TO THE  
HOUSE COMMITTEE  
ON  
FINANCE**

February 18, 2010

10:00 a.m.

HB 2133, HD1

**RELATING TO PROCUREMENT**

Chair Oshiro, Vice Chair Lee, and committee members, thank you for the opportunity to testify on HB 2133, HD1.

PART I of this bill proposes that an award will be made within 45-days of 'initial request for proposals but in no case later than fifteen days after the deadline for proposals' and once notice of award is made, a contract shall be effective, and the solicitation, offer, bid or proposal and the notice of award shall serve as the contract document. No other written document will be required.

This proposed bill treats all procurements equally, but they are not all the same. For example, for professional services contracts, while there is a solicitation, there is no offer only a statement of interest and qualifications, and the terms of the scope of work, agreement period, fee, etc. are not in writing until the negotiated written contract is completed.

For regular competitive sealed bidding and competitive sealed proposals without a separate written contract, there is no assurance that the parties are referring to the same documents and have a common understanding of what is in the contract. This may result in complications during the course of the performance of the contract when the parties viewing different documents have different expectations of their obligations and the obligations of the other party. There would be circumstances when it would be beneficial to the governmental body to have a separate written contract, for instance when there are numerous addenda and series of offers and a separate written contract would serve to confirm the agreement between the parties.

In instances where an alternative method of procurement is utilized as a result of a procurement conducted through competitive sealed bidding, competitive sealed proposals or professional services whereby negotiation would take place, the written contract would include what was agreed to. The written contract assures that both parties are in agreement as to what goods, services or construction will be provided at the agreed price and agreed terms and conditions. With all the changes that may occur during the procurement, this written contract confirms the parties' agreement.

The bill would work best for simple, straightforward competitive sealed bidding when the solicitation requires an all-in-one solicitation/offer form, that way the solicitation and offer are contained and referenced in the same document, and the notice of award serves as the government's acceptance of the offer.

The SPO does not support PART I of this bill because it would not be feasible for all methods of procurement, only as stated in the above paragraph for the simple straightforward competitive sealed bidding.

The proposed amendment to PART II is unnecessary, and recommend be deleted. WSCA solicitation allows contract manufacturers to designate resellers, with the terms and conditions for ordering and payment identified in the master agreement. If the master agreement allows for ordering and payment directly to a local reseller, SPO complies with those provisions. It would be inappropriate to require a contractor to accept a reseller, or to dictate the terms and conditions between the contractor and resellers. The proposed language may limit Hawaii's participation in multi-state cooperative agreements and prevent the State of taking advantage of the volume discounts provided by these cooperative agreements.

Thank you.

## BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU  
630 SOUTH BERETANIA STREET  
HONOLULU, HI 96843



February 17, 2010

MUFI HANNEMANN, Mayor

RANDALL Y. S. CHUNG, Chairman  
SAMUEL T. HATA  
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BRENNON T. MORIOKA, Ex-Officio

WAYNE M. HASHIRO, P.E.  
Manager and Chief Engineer

DEAN A. NAKANO  
Deputy Manager

The Honorable Marcus R. Oshiro, Chair  
and Members  
House of Representatives  
Committee on Finance  
State Capitol, Conference Room 308  
Honolulu, Hawaii 96813

Subject: House Bill 2133, HD1, Relating to Procurement

Thank you for the opportunity to submit testimony on HB 2133, HD1.

The Board of Water Supply, City and County of Honolulu, opposes this bill. HB 2133, HD1, requires that an award shall be made within forty-five days of the initial request for proposals and no later than fifteen days after the deadline for proposals. This blanket requirement for all methods of procurement fails to recognize that the procedures for each of the methods of procurement are not identical. Some methods of procurement such as request for proposals under Section 103D-303, Hawaii Revised Statutes (HRS) and Professional Services under Section 103D-304, HRS, require more time after the posting of the initial solicitation and receipt of proposals and statements of qualifications to review the submittals and make an award.

Additionally, certain solicitations, including requests for bids under Section 103D-302, HRS, require more scrutiny of bid and proposal documents to evaluate and ensure that the award is being made to the lowest responsive responsible bidder. Situations may also arise where bids or proposals received exceed available funds, and an agency requires more time to determine if additional funds may be obtained or to engage in negotiations with the lowest responsive responsible bidder to bring the bid or proposal within the budgeted amount.

Finally, imposing a hard deadline for an award could create delay claims by a contractor if the agency requires additional time to fully evaluate the proposal or is not able to immediately issue a notice to proceed.

Accordingly, the Board of Water Supply does not support this bill, as it is not feasible for all methods of procurement.

Sincerely,

WAYNE M. HASHIRO, P.E.  
Manager and Chief Engineer

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Honolulu, HI 96819  
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# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

February 17, 2010

TO: THE HONORABLE REPRESENTATIVE MARCUS R. OSHIRO, CHAIR AND  
MEMBERS OF THE COMMITTEE ON FINANCE

SUBJECT: H.B. 2133, HD1 RELATING TO PROCUREMENT.

NOTICE OF HEARING

NOTICE OF HEARING

DATE: Thursday, February 18, 2010  
TIME: 10:00 A.M.  
PLACE: Conference Room 308

Dear Chair and Members of the Committee:

The General Contractors Association (GCA), an organization comprised of over five hundred and seventy (570) general contractors, subcontractors, and construction related firms, **supports** the passage of H.B. 2133, HD1, Relating to Procurement.

This bill would require that a contract be deemed effect upon notice of award and eliminate the requirement for a subsequent written contract in order for the contractor to proceed with execution of the work. We believe that his measure will speed up the current procurement procedure for the award of state capital improvement contracts and result in more efficient and timely start of work on construction projects.

The GCA **supports** the passage of H.B. 2133 HD1 and recommends that the committee pass the bill.

Thank you for the opportunity to provide our views on this issue.