

LINDA LINGLE
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**STATE OF HAWAII
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TESTIMONY
OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
FINANCE
ON
FEBRUARY 18, 2010

H.B. 2901, H.D. 1

RELATING TO PROCUREMENT

Chair Oshiro and members of the Committee, thank you for the opportunity to testify on H.B. 2901, H.D. 1.

The Department of Accounting and General Services (DAGS) has concerns about this bill because it will increase the cost of design-build construction projects. In addition, if passed, unsuccessful proposers will not be allowed to protest an award. This is inconsistent with the procurement code's design, which calls for fair and equal treatment of all competitors and that avails all competitors of the protest process.

Entitling each unsuccessful proposer that submits a technically-responsive proposal to \$10,000 plus a half percent (.5%) of the amount of the design-build contract will result in each design-build project, assuming 4 unsuccessful offerors, costing 2.0% plus \$50,000 up to \$1,000,000 more than would otherwise be the case. Appropriations for design-build construction projects would need to be increased by that amount to be viable. If a contract were awarded and executed for a \$10 million design-build project,

the procuring agency will pay \$60,000 to each unsuccessful proposer. If there were four unsuccessful proposers, an additional \$240,000 would be added to the \$10 million design-build project cost. If the optional .8% allowance is used, each unsuccessful provider would receive \$90,000, meaning that \$360,000 would be added to the project cost. That is more than 70% of the typical contingency that is factored into a project of this size.

Thank you for the opportunity to testify on this matter.

LINDA LINGLE
GOVERNOR

AARON S. FUJIOKA
ADMINISTRATOR



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SPO 10-110

February 18, 2010

The Honorable Marcus R. Oshiro, Chair
House Committee on Finance
State Capitol, Room 306
Honolulu, Hawaii 96813

LATE TESTIMONY

Dear Chair Oshiro:

This is to follow-up in writing regarding my earlier verbal comments made at the February 18, 2010 hearing on H.B. 2901, HD 1.

Specifically page 5, lines 20 - 22 authorizes "The recipient of the stipend shall authorize the agency to use elements of its design that were included in its proposal."

When an award is made pursuant to HRS §103D-303, the selection is based on the evaluation factors established in the request for proposals and the evaluation shall be based only on the evaluation factors. The evaluation and selection is based on the specific contents of the individual proposal.

The above proposed bill language, as well as comments made by a testifier, may have suggested that an agency may switch the contents of the non-selected or non-awarded proposal and substitute it for the selected offeror's proposal. That practice is not permitted as it would undermine the evaluation process and the basis of the award and invite protests. The award is based on the specific contents of the individual proposal and not based on various pieces taken from various proposals. This scenario of using concepts/ideas from other offerors to incorporate into a proposal is usually reserved for the Request for Information process in the development of the solicitation. Once a solicitation or the request for proposals is issued, all elements for evaluation are stated in the document, to ensure all participants are given equal opportunity to be evaluated fairly.

Additionally, on page 4, lines 7 - 9, this proposed amendment for §103D-303 allowing "A design-build offeror ... design professional licensed under chapter 464..." to submit an offer is in conflict with §103D-304(a) which states that "... design professional services furnished by licensees under chapter 464 shall be procured pursuant to this section or section 103D-307."

Thank you for the opportunity to provide these comments. Should you or your staff have any questions, please call me at 587-4700.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron S. Fujioka".

Aaron S. Fujioka