

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



BONNIE KAHAKUI
ACTING ADMINISTRATOR

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

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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
GOVERNMENT OPERATIONS
FEBRUARY 2, 2023, 3:15 PM

SENATE BILL 387
RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Gabbard, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 387. The State Procurement Office (SPO) opposes the additional language to Section 103D-308, Hawaii Revised Statutes (HRS).

The SPO opposes the language in SB 387 that amends Section 103D-308, HRS, to require governmental bodies to obtain written approval from the Administrator of the State Procurement Office to cancel invitations for bids, requests for proposals, or other solicitations, or reject bids or proposals. SB387 also prohibits post-award remedial actions to be taken unless approved in writing by the Administrator of the State Procurement Office.

Section 103D-308, Hawaii Revised Statutes, already states that an invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation when it is in the best interests of the governmental body that issued the invitation, request, or other solicitation, in accordance with rules adopted by the Procurement Policy Board. Additionally, Section 3-122-96, Hawaii Administrative Rules, outlines the justifiable reasons when a solicitation may be cancelled, or when it is in the public interest if a determination is made by the chief procurement officer or designee.

Furthermore, Section 3-122-33, Hawaii Administrative Rules, states that any bidder's offering which does not meet the acceptability requirements shall be rejected as nonresponsive.

There are already checks in place for the cancellation of solicitations, or rejection of bids or proposals. It is not necessary for the Administrator of the State Procurement Office to oversee all cancellations or rejections of bids or proposals and it creates an undue administrative burden.

The Administrator of the State Procurement Office is the Chief Procurement Officer (CPO) of the executive departments. The CPO delegates procurement authority to the Heads of the Purchasing Agencies (HOPA) and they may in turn, delegate responsibility to procurement officers to oversee departmental procurements. Other jurisdictions have their own Chief Procurement Officers.

HOPAs or procurement officers of the executive departments and Chief Procurement Officers of other jurisdictions approve awards and other procurement activity decisions and have access to all the details of their procurements. Therefore, they should be held responsible to make determinations whether solicitations should be cancelled for justifiable reason, or if it in the best interest of the state. Purchasing agencies are also in the best position to make determinations whether bids or proposals should be rejected according to the Hawaii Administrative Rules that are already set in place. Requiring the Administrator of the State Procurement Office approve all cancellations of solicitations and rejections of bids or proposals is unnecessary and burdensome, and adds another layer to the process, which creates inefficiencies, and crosses the boundaries into other CPO jurisdictions and their responsibilities.

Thank you.

Mitchell D. Roth
Mayor



Deanna S. Sako
Director

Diane Nakagawa
Deputy Director

County of Hawai'i

Finance Department

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LATE

February 1, 2023

The Honorable Angus L.K. McKelvey, Chair
and Members of the Senate Committee on Government Operations
Hawai'i State Capitol
415 South Beretania Street, Room 225
Honolulu, Hawai'i 96813

RE: SB387, RELATING TO PROCUREMENT

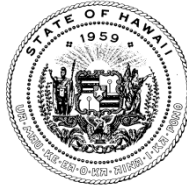
Thank you for this opportunity to testify in Opposition of SB387.

This bill proposes to require the State Procurement Office (SPO) to approve all cancellations of invitations for bids and requests for proposals. While the County of Hawai'i is committed to abiding by the procurement law, this bill adds an additional level of review and administrative process. Cancellations primarily occur because the bids come in higher than budgeted, and because we learn that specifications need to be modified after receiving numerous questions and concerns on the solicitation. We feel that this bill will be overburdensome on SPO and will delay the process of getting new solicitations out. We would like to streamline the procurement process not make it more difficult for us and the State Procurement Office.

Therefore, I oppose the passage of this bill.

A handwritten signature in black ink, appearing to read "D. Sako".

Deanna S. Sako
Director of Finance and Chief Procurement Officer



TESTIMONY BY:
EDWIN H. SNIFFEN
DIRECTOR

Deputy Directors
DREANALEE K. KALILI
TAMMY L. LEE
ROBIN K. SHISHIDO
JAMES KUNANE TOKIOKA

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

Thursday, February 2, 2023
3:15 P.M.
State Capitol
Conference Room 225 & Videoconference



S.B. 387
RELATING TO PROCUREMENT

Senate Committee on Government Operations

The Department of Transportation (DOT) **opposes** the bill which requires governmental bodies to obtain written approval from the Administrator of the State Procurement Office to cancel invitations for bids, requests for proposals, or other solicitations, or reject bids or proposals; prohibits post-award remedial actions to be taken unless approved in writing by the Administrator of the State Procurement Office.

The DOT comments that the proposed amendments to Section(s) 103D-308 and 103D-707, Hawaii Revised Statutes, requiring written approval of the Administrator of the State Procurement Office (SPO) would take away respective operational decision-making which should stay with the procuring agency. Further, the additional layer of review and approval by SPO would (adversely) impact the procuring agency's ability to execute decisions efficiently and effectively for next step action to not further compromise and delay the project delivery timeline.

The procuring agency, as the appropriate authority and subject matter expert for operational decision-making on their procurement(s), is best qualified to decide whether a procurement should be cancelled because the construction is no longer required, or a bid should be rejected due to not meeting the procurement code as well as specifications.

As the primary stakeholder with key knowledge on a respective procurement, the procuring agency is the most familiar and well-equipped to determine whether a cancellation of a procurement or rejection of bids or proposals is in the best interest of the State.

Thank you for the opportunity to provide testimony.

BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU
630 SOUTH BERETANIA STREET
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February 2, 2023

RICK BLANGIARDI, MAYOR

BRYAN P. ANDAYA, Chair
KAPUA SPROAT, Vice Chair
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JONATHAN KANESHIRO

DAWN B. SZEWCZYK, P.E., Ex-Officio
EDWIN H. SNIFFEN, Ex-Officio

ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer

ERWIN M. KAWATA
Deputy Manager

The Honorable Angus L. K. McKelvey, Chair
and Members
Committee on Government Operations
State Senate
Hawaii State Capitol
Honolulu, Hawaii 96813

Dear Chair McKelvey and Members:

Subject: Senate Bill 387: Relating to Procurement

The Board of Water Supply (BWS) strongly opposes Senate Bill (SB) 387, which requires governmental bodies to obtain written approval from the Administrator of the State Procurement Office (SPO) to cancel invitations for bids, requests for proposals, or other solicitations, or reject bids or proposals. This measure also prohibits post-award remedial actions to be taken unless approved in writing by the Administrator of the SPO.

As written, the bill proposes to remove the authority of the respective Heads of Procurement Agencies (HOPA's) and Chief Procurement Officers (CPO's) from the various government departments and jurisdictions to cancel solicitations and places the final authority with the Administrator of the State Procurement Office (SPO).

The current statute as enacted grants the respective HOPA/CPO's the authority and the due diligence to proceed on these matters as they are the subject matter experts specific to each project. Each situation in which there is a need to cancel a solicitation is different and the evaluation, assessment, and final decisions are facilitated through our legal counsel prior to issuance and electronic posting of the cancellation. Adding another layer of administrative review and approval by the Administrator of SPO is unnecessary, would significantly delay the procurement process, and potentially adversely affect government operations and services to the public by hindering departments' ability to quickly re-post a solicitation and the timely encumbrance of fiscal year funding, as applicable.

Further, the bill usurps the respective HOPA/CPO's authority and due diligence to proceed on matters that they are experts on the subject matter specific to each project. Each post award situation is different and the evaluation, assessment, and final decision of the appropriate remedial action are facilitated through our legal counsel. Adding another layer of administrative review and approval by the Administrator of SPO is

The Honorable Angus L. K. McKelvey, Chair
and Members
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unnecessary, and in situations where ratification or award to the next lowest bidder is deemed appropriate and in the best interest of the government, would significantly delay the continuation of the contract or procurement process and potentially adversely affect government operations, the timely encumbrance of fiscal year funding, and services to the public.

Thank you for the opportunity to provide testimony in strong opposition to SB387.

Very truly yours,



ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer

