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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Labor and Public Employment
Thursday, March 14, 2019
9:00 a.m.
State Capitol, Conference Room 309**

**On the following measure:
S.B. 1213, S.D. 1, RELATING TO PROCUREMENT FILING FEE**

Chair Johanson and Members of the Committee:

My name is Craig Uyehara, and I am the Senior Hearings Officer of the Department of Commerce and Consumer Affairs' (Department) Office of Administrative Hearings. The Department supports this administration bill and requests an amendment.

The purpose of this bill is to provide a funding mechanism to partially cover the costs to conduct bid challenge hearings by authorizing the Department to assess a non-refundable filing fee upon the party initiating the bid challenge for contracts with an estimated value of \$500,000 or more. S.D. 1 amends the effective date from "upon approval" to July 1, 2050.

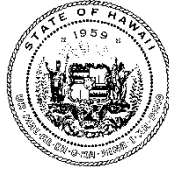
Procurement bid challenges often result in project delays, funding lapses, and project cost increases. These concerns have been partly addressed by the requirement that the Office of Administrative Hearings process and commence hearing these cases within 21 days and issue decisions within 45 days of the filing of the challenge.

However, these proceedings can involve complex issues, multiple litigants, and days or weeks of hearing. Therefore, to meet these strict deadlines and issue written decisions that can withstand appellate review, the Department must assign these cases the highest priority in terms of time and resources. Hearings for other non-procurement cases must be delayed, and the hearings officers must commit substantial time to complete the bid challenge proceedings by the statutory deadlines. Historically, it has taken approximately 100 hours or more for the hearings officer to complete the hearing process and issue a thoughtful and thorough decision. Even though the Department has been tasked with this critical responsibility, it has received no appropriation of funds to defray the costs of these proceedings. As a result, all of these costs have been indirectly paid for by the license registration fees assessed by the Department from registrants who have no involvement in the procurement process.

This bill will require a party initiating a bid challenge for larger contracts (contracts with an estimated value of at least \$500,000) to pay the Department a non-refundable filing fee to help defray the costs of the administrative review of bid challenges. Under this bill, a party initiating a bid challenge will be required to pay a \$200 non-refundable filing fee for a contract with an estimated value of \$500,000 or more, but less than \$1,000,000, and \$1,000 for a contract with an estimated value of \$1,000,000 or more. This fee will be deposited into the Compliance Resolution Fund and used exclusively to defray the costs of addressing bid challenges. To avoid any “chilling effect” on small businesses challenging bid protest denials, no filing fee will be assessed for contracts with an estimated value less than \$500,000.

The Department supports this administration bill and respectfully requests that the Committee amend the effective date to the original provision of “upon approval.” Thank you for the opportunity to testify.

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR
BONNIE KAHAKUI
ASSISTANT ADMINISTRATOR

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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
LABOR & PUBLIC EMPLOYMENT

March 14, 2019, 9:00 A.M.

SB 1213, SD 1
RELATING TO PROCUREMENT FILING FEE

Chair Johanson, Vice Chair Eli, and members of the committee, thank you for the opportunity to submit testimony on SB1213, SD 1. The State Procurement Office's (SPO) supports the intent of the bill which requires a party initiating a bid challenge to pay the Department of Commerce and Consumer Affairs a non-refundable filing fee for contracts.

The success of a process is to ensure that all sub-processes feeding the objective are in full health. The objective of the protest hearings office in DCCA is to continue the opportunity for transparency, and alert both government and community that there are improvements needed in our Policy or processes for the procurement life-cycle.

In this case DCCA is acting under a Special Fund that must sustain with only the revenues it achieves. Large, complex cases sometimes require hundreds of hours of administration and review. These costs are being absorbed with no respective revenues to achieve break-even.

The SPO endorses and encourages procurement integrity as well as supporting the outlet to question procurement practices in an effort to constantly improve. The systemic outlook on all departments that are part of the procurement chain must be considered. Please consider allowing DCCA to retrieve monies in order to promote a sustainable program to the community.

Thank you.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

Date

TO: HONORABLE REP. AARON LING JOHANSON, CHAIR, REP. STACELYNN K.M. ELI, VICE CHAIR, AND THE MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

SUBJECT: TESTIMONY IN OPPOSITION TO SB1213: RELATING TO PROCUREMENT FILING FEE.

Hearing

DATE: Thursday, March 14, 2019
TIME: 9:00 a.m.
PLACE: Conference Room 309
Hawaii State Capitol

Dear, Rep. Aaron Ling Johanson, Chair, Rep. Stacelynn K.M. Eli, Vice Chair, and the members of the House Committee on Labor and Public Employment:

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest. To that end, we have deep concerns on SB1213.

SB1213 requires a party initiating a bid challenge to pay the Department of Commerce and Consumer Affairs a non-refundable filing fee for contracts with an estimated value of \$500,000 or more. While we respect that the intent of the bill is to create a funding mechanism to partially cover the costs to conduct bid challenge hearings by authorizing the Department to assess a non-refundable filing fee upon the party initiating the bid challenge, GCA greatly opposes any effort that may deter responsible bid protests from occurring and is deeply concerned that this bill sets a dangerous precedent toward that end.

The bid protest process is integral to ensuring government transparency and serves as a low-cost way of injecting accountability into procurement systems (compared to regular audits of the entire system). Bid protests can also increase the confidence of bidders and the general public in the procurement system, empower agencies to act in accordance with the laws and regulations governing procurement and provide guidance to both agency counsel and attorneys representing bidders in the procurement process and future bids. Any potential filing fee would serve as a deterrent to responsible parties initiating a bid protest and participating in this all-important process.

If the intent of the bill is to prevent potential frivolous bid protests, there are already mechanisms in place that serve as responsible deterrents and do not put undue burden on the party initiating the bid protest. The current mechanism of requiring a bond of the initiating party when filing a

bid protest (if the initiating party prevails in the administrative proceeding, the cash or protest bond shall be returned to that party. If the initiating party does not prevail in the administrative proceeding, the cash or protest bond shall be deposited into the general fund.) in and of itself is an adequate deterrent toward frivolous bid protests being initiated.

GCA opposes SB1213. Thank you for the opportunity to share our opposition.

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