



GOV. MSG. NO. 887

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 8, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB2827 SD1 HD1 CD1, without my approval, and with the statement of objections relating to the measure.

SB2827 SD1 HD1 CD1

A BILL FOR AN ACT RELATING TO PUBLIC
CONTRACTS.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2008

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2827

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval Senate Bill No. 2827 entitled "A Bill for an Act Relating to Public Contracts."

The purposes of Senate Bill No. 2827 are to: (1) require written notification to those persons who were considered for, but who were not awarded a professional services contract; (2) require written notification to all offerors who were not selected for award of a contract; (3) require additional information to be posted with the notice of award; and (4) extend the period in which to protest from five working days to seven working days.

Transparency and accountability in the manner in which the State procures goods and services has been one of the hallmarks of my Administration. This bill is objectionable because it would create confusion and subject the State to additional protests and delays in obtaining public goods and services.

First, the bill requires purchasing agencies who solicit bids of \$5,000 or more to notify all parties that they were not selected no later than the day the winning bid is posted. It is common knowledge that most bidders check the

STATEMENT OF OBJECTIONS
SENATE BILL NO. 2827
Page 2

postings to see if they were selected. To require the State to notify all non-selected parties could result in some non-selected bidders claiming they were never officially notified, stopping the project award and forcing an investigation of the protest.

Second, my executive memorandum, dated January 20, 2006, and State Procurement Circulars already require information to be posted with the notice of award. This bill makes the new requirements effective immediately.

While there is general agreement that transparency in procurement is desirable, the lack of time provided to prepare for the implementation of these new requirements will create administrative difficulties and likely result in additional procurement challenges. In addition to the immediate administrative burdens on the State procurement office to complete new procurement forms, directives, and circulars, and modify its website, all being necessary to accommodate these new requirements, other agencies would not know how to proceed until these documents can be issued and the agencies could be trained by the State procurement office.

Further, changes to the statute are not necessary to increase the amount of information posted with the notice of award, and I have instructed the Director of the Department of Accounting and General Services to update our current procedures to maximize available posting data without compromising trade secrets or proprietary information.

STATEMENT OF OBJECTIONS
SENATE BILL NO. 2827
Page 3

For the foregoing reasons, I am returning Senate Bill
No. 2827 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO PUBLIC CONTRACTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 103D-304, Hawaii Revised Statutes, is
2 amended by amending subsection (i) to read as follows:

3 "(i) Contracts awarded under this section for \$5,000 or
4 more shall be posted electronically within seven days of the
5 contract award by the chief procurement officer or designee and
6 shall remain posted for at least one year. Written notification
7 to the non-selected persons ranked under subsection (g) shall be
8 sent not later than the day of the posting of the award.

9 Information to be posted shall include, but not be limited to:

- 10 (1) The names of the persons submitted under subsection
 (g) [†], including the ranking;
- 12 (2) The name of the person or organization receiving the
13 award;
- 14 (3) The dollar amount of the contract;
- 15 (4) The name of the head of the purchasing agency or
16 designee making the selection; and



1 (5) Any relationship of the principals to the official
2 making the award."

3 SECTION 2. Section 103D-701, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§103D-701 Authority to resolve protested solicitations
6 and awards. (a) Any actual or prospective bidder, offeror, or
7 contractor who is aggrieved in connection with the solicitation
8 or award of a contract may protest to the chief procurement
9 officer or a designee as specified in the solicitation. Except
10 as provided in sections 103D-303 and 103D-304, a protest shall
11 be submitted in writing within [~~five~~] seven working days after
12 the aggrieved person knows or should have known of the facts
13 giving rise thereto; provided that a protest of an award or
14 proposed award shall in any event be submitted in writing within
15 [~~five~~] seven working days after the posting of award of the
16 contract under section 103D-302 or 103D-303, if no request for
17 debriefing has been made, as applicable; provided further that
18 no protest based upon the content of the solicitation shall be
19 considered unless it is submitted in writing prior to the date
20 set for the receipt of offers.

21 (b) The purchasing agency shall notify in writing all
22 offerors that solicited an award of a contract of their non-



1 selection not later than the day of the posting of the award.
2 Information posted publicly about the award shall include, where
3 applicable, but is not limited to:

- 4 (1) The names of offerors soliciting an award of the
5 contract;
6 (2) The numerical scores given by the evaluation committee
7 to the acceptable and potentially acceptable
8 proposals, and if a best and final offer was
9 requested, the names of the priority-listed offerors
10 and their final numerical scores;
11 (3) The name of the successful offeror and dollar amount
12 of the award; and
13 (4) The basis for making the award to the successful
14 offeror; provided that trade secrets or other
15 proprietary or confidential information shall not be
16 disclosed.

17 ~~[(b)]~~ (c) The chief procurement officer or a designee,
18 prior to the commencement of an administrative proceeding under
19 section 103D-709 or an action in court pursuant to section
20 103D-710, may settle and resolve a protest concerning the
21 solicitation or award of a contract. This authority shall be
22 exercised in accordance with rules adopted by the policy board.



1 [~~e~~] (d) If the protest is not resolved by mutual
2 agreement, the chief procurement officer or a designee shall
3 promptly issue a decision in writing to uphold or deny the
4 protest. The decision shall:

- 5 (1) State the reasons for the action taken; and
- 6 (2) Inform the protestor of the protestor's right to an
7 administrative proceeding as provided in this part, if
8 applicable.

9 [~~d~~] (e) A copy of the decision under subsection [~~e~~]
10 (d) shall be mailed or otherwise furnished immediately to the
11 protestor and any other party intervening.

12 [~~e~~] (f) A decision under subsection [~~e~~] (d) shall be
13 final and conclusive, unless any person adversely affected by
14 the decision commences an administrative proceeding under
15 section 103D-709.

16 [~~f~~] (g) In the event of a timely protest under
17 subsection (a), no further action shall be taken on the
18 solicitation or the award of the contract until the chief
19 procurement officer makes a written determination that the award
20 of the contract without delay is necessary to protect
21 substantial interests of the State.



1 [~~g~~] (h) In addition to any other relief, when a protest
2 is sustained and the protestor should have been awarded the
3 contract under the solicitation but is not, then the protestor
4 shall be entitled to the actual costs reasonably incurred in
5 connection with the solicitation, including bid or proposal
6 preparation costs but not attorney's fees."

7 SECTION 3. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 4. This Act shall take effect upon its approval.

