

Honolulu, Hawaii

March 2 , 2012

RE: H.B. No. 1671
H.D. 2

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committee on Finance, to which was referred H.B. No. 1671, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT,"

begs leave to report as follows:

The purpose of this measure as received by your Committee is to streamline the procurement protest process by:

- (1) Imposing time limits on rendering administrative and judicial review decisions;
- (2) Limiting protests to be heard by a hearings officer to those protests that amount to a minimum percentage of the contract value;
- (3) Requiring the posting of a protest bond which will be forfeited if the protesting party does not prevail; and
- (4) Requiring the hearings officer to transmit the record of the administrative proceeding to circuit court, within ten calendar days of the filing of an application for judicial review and giving the court jurisdiction over the matter for 30 days.



Additionally, this measure requires the State Procurement Office to keep statistics on protested solicitations and awards.

Prior to the hearing, your Committee circulated for consideration and received testimony on a Proposed H.B 1671, H.D. 2 (Proposed H.D. 2).

The provisions of the Proposed H.D. 2 are substantively similar to the measure received by your Committee, except that the Proposed H.D. 2:

- (1) Authorizes the Chief Procurement Officer, prior to the commencement of an administrative proceeding or court action, to resolve and settle a protest of a solicitation or award of a contract within ten business days after receipt of the protest;
- (2) Requires the Chief Procurement Officer to issue a decision upholding or denying the solicitation or award of a contract protest within 20 days of receiving the protest; and
- (3) Changes the standard of proof for an initiating party in a protest concerning the solicitation or award of a contract from a preponderance of the evidence to clear and convincing evidence.

The Department of Transportation and Building Industry Association of Hawaii testified in support of the Proposed H.D. 2. The Department of Commerce and Consumer Affairs, Department of Budget and Fiscal Services of the City and County of Honolulu, and General Contractors Association of Hawaii provided comments.

Your Committee has amended the Proposed H.D. 2 by:

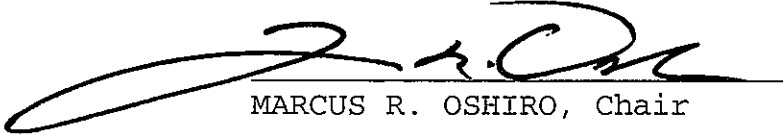
- (1) Requiring that the Chief Procurement Officer compile a record of protest in addition to issuing a decision upholding or denying the solicitation or award of a contract protest within 20 days of receiving the protest;
- (2) Authorizing hearings officers to review and determine any protested solicitation or award and specifying the required review process therefor;



- (3) Restoring the standard of proof for an initiating party in a protest concerning the solicitation or award of a contract back to a preponderance of the evidence;
- (4) Specifying the required procedures to be followed by hearings officers for administrative proceedings for review, including the procedure applicable to protested solicitations and awards;
- (5) Changing the effective date to July 1, 2012; and
- (6) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1671, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1671, H.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Finance,



MARCUS R. OSHIRO, Chair



State of Hawaii
House of Representatives
The Twenty-sixth Legislature

HSCR 922-12

Record of Votes of the Committee on Finance

Bill/Resolution No.: <i>HB 1671, HD1</i>	Committee Referral: <i>ERB, FIN</i>	Date: <i>2/28/12</i>		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
FIN Members	Ayes	Ayes (WR)	Nays	Excused
1. OSHIRO, Marcus R. (C)	✓			
2. LEE, Marilyn B. (VC)	✓			
3. CHOY, Isaac W.	✓			
4. CULLEN, Ty	✓			
5. GIUGNI, Heather	✓			
6. HAR, Sharon E.	✓			
7. HASHEM, Mark J.	✓			
8. ICHIYAMA, Linda	✓			
9. JORDAN, Jo	✓			
10. KAWAKAMI, Derek S.K.	✓			
11. LEE, Chris	✓			
12. MORIKAWA, Dee	✓			
13. TOKIOKA, James Kunane	✓			
14. YAMASHITA, Kyle T.	✓			
15. MARUMOTO, Barbara C.	✓			
16. RIVIERE, Gil	✓			
17. WARD, Gene				✓
TOTAL (17)	<i>16</i>	<i>0</i>	<i>0</i>	<i>1</i>
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature: <i>Marilyn B. Lee</i>				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				