

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR
MARA SMITH
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
FINANCE

February 28, 2017, 11:00 AM

HOUSE BILL 1322 HD1
PROCUREMENT CODE; CONSTRUCTION; FEDERAL REQUIREMENTS; ANALYSIS
RELATING TO CONSTRUCTION CONTRACTS

Chair Luke, Vice-Chair Cullen, and members of the committee, thank you for the opportunity to submit testimony on House Bill 1322 HD1.

SPO has no objection to this bill, however, the State does not have the necessary infrastructure in place to adequately replicate the federal processes and some processes may not be replicable due to economies of scale.

There is also a lack of clarity on the following:

- Page 1 Line 9 mentions a cost-benefit analysis against but does not specify to what it should be compared or what costs should be taken into account.

Lastly, the estimate for the cost of the analysis will be quite high. The comparison of state and federal statutes alone will likely require outsourcing to multiple contractors as it is unlikely federal companies will have knowledge of our state statutes and vice versa. At least \$1.2 million is likely a conservative estimate.

Thank you.

DAVID Y. IGE
GOVERNOR



KATHRYN S. MATAYOSHI
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/28/2017
Time: 11:00 AM
Location: 308
Committee: House Finance

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: HB 1322, HD1 RELATING TO CONSTRUCTION CONTRACTS.

Purpose of Bill: Requires the State Procurement Office, in conjunction with DOE, UH, DOT, and DAGS, to conduct an analysis and review of the Hawaii Public Procurement Code, specifically with regard to the awarding of construction contracts. Appropriates an unspecified amount of funds for the analysis and review. (HB1322 HD1)

Department's Position:

The Department of Education (Department) supports the intent of this bill.

The Department acknowledges the existence of flaws in the current procurement process. These flaws turn into added expenses that become the burden of state tax payers. Improvements to this process could possibly create more spending capital for projects throughout the state.

Thank you for the opportunity to testify on this bill.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Finance
February 28, 2017 at 11:00 p.m.

by
Jan Gouveia
Vice President for Administration
University of Hawai'i System

HB 1322 HD1 – RELATING TO CONSTRUCTION CONTRACTS

Chair Luke, Vice Chair Cullen, and members of the committee:

The University of Hawai'i is pleased to submit this testimony in support of HB 1322 HD1. This measure provides for a comprehensive analysis and review of the Hawai'i State Procurement Code, particularly with regard to the awarding of construction contracts.

The University of Hawai'i believes there are always opportunities for improvement to a complicated and sophisticated subject area, like procurement. To that end, we welcome the opportunity to work closely with our counterparts towards evaluating more optimum procurement methods, processes and procedures that could result in savings of time, money and effort. This is particularly important at a time when the university is facing a large deferred maintenance backlog. These efforts could enable us to make better use of the scarce resources available to renew, improve and modernize our facilities. We would be pleased to participate with the State Procurement Office and our fellow agencies in analyzing the current code and providing recommendations for improvement.

Thank you for this opportunity to testify in support of HB 1322 HD1.



Testimony by:
FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

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

February 28, 2017
11:00 a.m.
State Capitol, Room 308

H.B. 1322, H.D. 1
RELATING TO CONSTRUCTION CONTRACTS

House Committee on Finance

The Department of Transportation (DOT) **supports** the intent of this bill which proposes to require the State Procurement Office (SPO), in conjunction with the Department of Education (DOE), the University of Hawaii (UH), the DOT and the Department of Accounting and General Services (DAGS) to conduct an analysis and review of the Hawaii Public Procurement Code, specifically with regard to the awarding of construction contracts.

The DOT provides the following comments:

It is not clear what the cost benefit analysis of the current Procurement Code is measured against. In other words, what procurement process is the current process to be compared to?

SPO, DOE, DOT, and DAGS participated as Task Force Members that resulted in the final report of April 14, 2015, therefore, a review of issues and concerns raised by this Task Force might not be necessary.

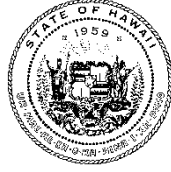
A review of federal procurement laws to compare the similarities and differences between the federal and State of Hawaii procurement laws could be beneficial. The federal requirements are set as the minimum requirements and the states are left with creating greater requirements (and protections). The United States DOT has several operating administrations, the Federal Aviation Administration (FAA), the Federal Highways Administration (FHWA), the Federal Transit Administration (FTA) and the US Maritime Administration, each of these operating administrations have distinctive requirements that only apply to the specific operating administration when federal funds are used.

It is the DOT experience that generally, in federal procurement as well as in Hawaii, foundational procurement principles are similar, if not the same. Examples are bidder responsiveness and responsibility. However, while the principles are the same, there

are marked differences in the determination of bidder responsiveness between federal procurement and Hawaii procurement. A major difference is with the subcontractor listing requirement under Hawaii procurement. A bid may be deemed non responsive to a solicitation if it does not comply with the subcontractor listing requirement. There is no corresponding requirement under federal procurement.

Thank you for the opportunity to provide testimony.

DAVID Y. IGE
GOVERNOR



RODERICK K. BECKER
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

TESTIMONY OF
RODERICK K. BECKER, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE ON FINANCE
ON
TUESDAY, FEBRUARY 28, 2017
11:00 A.M.
CONFERENCE ROOM 308

H.B. 1322, H.D. 1

RELATING TO CONSTRUCTION CONTRACTS.

Chair Luke, Vice Chair Cullen, and members of the Committee, thank you for the opportunity to submit testimony on H.B. 1322, H.D. 1.

The Department of Accounting and General Services (DAGS) supports the intent of the measure and is willing to work with the State Procurement Office and designated departments in undertaking a comprehensive analysis and review of the State Procurement Code, with respect to the awarding of construction contracts. Given the scope of the review, DAGS would apply such resources as are available within its budgetary constraints to facilitate the objectives of the bill.

Thank you for the opportunity to submit testimony on this matter.



AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

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February 27, 2017

House Committee on Finance

Hearing Date: Tuesday, February 28, 11:00 a.m., Conference Room 308

Subject: Comments Regarding HB 1322, Relating to Construction Contracts

Dear Chairs Nishihara and Mercado Kim, and Committee Members:

The American Council of Engineering Companies of Hawaii (ACECH) represents more than 70 engineering consulting firms with over 1,500 employees throughout Hawaii. ACECH member firm projects directly affect the quality of the water we drink and the food we eat; the safety of our buildings, highways, bridges, and infrastructure; and the quality of the environment in which we work and play. Procurement of design professional services is a serious business.

The bill calls for an analysis and review of the Hawaii public procurement code, particularly with regard to the awarding of construction contracts, and including Architect-Engineer (A-E) contracts. The stated goal is to compare the Hawaii public procurement code and federal construction procurement laws.

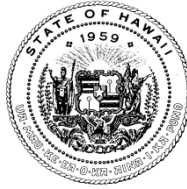
We note that Hawaii's legislature has previously adopted Qualification-Based Selection (QBS), modeled after the procurement code used by the Federal Government. Hawaii Revised Statutes (HRS) §103D-304 protects the public interest through the best practice for selecting the best qualified design professional for a particular project.

ACECH representatives have strong knowledge of best practices for A-E procurement, including the Federal and State laws, and would welcome the opportunity to be involved in the discussions with the State Procurement Office and State agencies concerning procurement of A-E services.

We appreciate the opportunity to provide comments on this matter. Please do not hesitate to contact us if you have any questions.

Respectfully submitted,
AMERICAN COUNCIL OF ENGINEERING COMPANIES OF HAWAII

Corey Matsuoka, PE
President



Testimony by:
FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

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

February 28, 2017
11:00 a.m.
State Capitol, Room 308

**H.B. 1322, H.D. 1
RELATING TO CONSTRUCTION CONTRACTS**

House Committee on Finance

The Department of Transportation (DOT) **supports** the intent of this bill which proposes to require the State Procurement Office (SPO), in conjunction with the Department of Education (DOE), the University of Hawaii (UH), the DOT and the Department of Accounting and General Services (DAGS) to conduct an analysis and review of the Hawaii Public Procurement Code, specifically with regard to the awarding of construction contracts.

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are marked differences in the determination of bidder responsiveness between federal procurement and Hawaii procurement. A major difference is with the subcontractor listing requirement under Hawaii procurement. A bid may be deemed non responsive to a solicitation if it does not comply with the subcontractor listing requirement. There is no corresponding requirement under federal procurement.

Thank you for the opportunity to provide testimony.

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LATE



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 28, 2017

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE TY CULLEN, VICE CHAIR, COMMITTEE ON FINANCE

SUBJECT: **SUPPORT OF H.B. 1322, HD1, RELATING TO CONSTRUCTION CONTRACTS.** Requires the State Procurement Office, in conjunction with DOE, UH, DOT, and DAGS, to conduct an analysis and review of the Hawaii Public Procurement Code, specifically with regard to the awarding of construction contracts. Appropriates an unspecified amount of funds for the analysis and review. (HB1322 HD1)

HEARING

DATE: February 28, 2017
TIME: 11:00 a.m.
PLACE: Capitol Room 309

Dear Chair Luke, Vice Chair Cullen and Members of the Committee,

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 GCA's 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.

GCA is in support of H.B. 1322, HD1, Relating to Procurement, which would require the State Procurement Office together with DOE, UH, DOT, and DAGS to conduct an analysis and review of the Hawaii Public Procurement with a directive, among other things, a "review of issues and concerns raised by the task force's final report of April 14, 2015, submitted to the legislature during the regular session of 2015, regarding the Hawaii public procurement process" and also a review of how Hawaii's code correlates with federal statute. The Task Force Report was a direct result of the passage of Senate Concurrent Resolution 92, SD2 (2013) which requested the Comptroller to Establish a Task Force to Study the State Procurement Code and Identify Amendments that Would Increase Economy, Efficiency, Effectiveness, and Impartiality in the Procurement of Public Works Construction Projects.

2013 Procurement Task Force pursuant to SCR 92, SD2 (2013)

From 2013 to 2015 major public works procurement agencies, GCA and other interested stakeholders participated in the Procurement Task Force convened by the legislature pursuant to Senate Concurrent Resolution 92, SD2 (2013). SCR 92 requested the Comptroller to Establish a Task Force to Study the State Procurement Code and Identify Amendments that Would Increase Economy, Efficiency, Effectiveness, and Impartiality in the Procurement of Public Works Construction Projects. The subcontractor listing requirement was one of four issues of

importance identified by the Task Force that required resolution. The report reflects that the members were split on the position with regard to repeal of the subcontractor listing. **However, it is important to note that three government agencies that regularly bid public works construction projects, including CIP projects voted in favor of repealing the listing requirement, particularly University of Hawaii, City and County of Honolulu and the Department of Education.**

Hawaii's Procurement Law should follow the ABA Model Procurement Code

It is important to note that the *ABA Model Procurement Code* has no reference or requirement to a mandatory subcontractor listing form. The *ABA Model Procurement Code* is the model code utilized by numerous states in delivering state and local spending in the procurement of goods, supplies, equipment, services, and construction. It would be beneficial for Hawaii to adopt the current provisions of the *ABA Model Procurement Code* to ensure proper delivery of publicly funded goods and services. Bid preferences and special interests have been embedded in Hawaii's procurement code making it difficult for the Code to properly deliver goods and services as intended by the Code. In order for the Procurement Code to apply equally and uniformly in the delivery of services and goods the elimination of bid preferences and special interests are necessary.

Thank you for this opportunity to **support** this measure and we respectfully request the Committee to move this measure forward.