



February 11, 2011

**Senate Committee on Public Safety, Government Operations, and Military Affairs**  
**Hearing Date: Saturday, February 12, 10:00am., Conference Room 229**

Honorable Senators Will Espero, Chair; Michelle Kidani, Vice Chair; and Members of the Senate Committee on Public Safety, Government Operations and Military Affairs

Subject: **SB 1537, Relating to Procurement**  
**TESTIMONY IN OPPOSITION**

Dear Chair Espero, Vice Chair Kidani, and Committee Members,

Yogi Kwong Engineers, LLC strongly **opposes SB 1537, Relating to Procurement**, which would require competitive bidding for drilling and soil testing services.

Drilling and soil testing are important and integral parts of geotechnical engineering design services. We are concerned that this bill would circumvent HRS 103D and result in other professional geotechnical design services being competitively bid, as geotechnical engineers rely on quality drilling, soil sampling and testing data to develop professional opinions and recommendations. This would violate the procurement code under HRS 103D-304 which requires that procurement of design professional services be based on selection (QBS) process and not by competitive bidding.

By having the State procure or mandate drilling and soil testing services directly on a competitive bid basis, the liability for such services and associated change orders or cost overrun should transfer from the professional design firms to the State.

Based on our experience, we are very concerned of the potential risks and liabilities associating with utilizing the lowest-priced bid to conduct soils investigations, as low bidding can result in an inadequate soils investigation to misleading soils data set, subsequent design and construction complications, potential claims and disputes, and associated costs. We believe it is in the best interest of the State that these services be conducted under the purview of a licensed engineer as part of professional design services.

We strongly recommend that SB 1537 be held. Thank you for an opportunity to express our concerns regarding this bill.

Very truly yours,  
**Yogi Kwong Engineers, LLC**

A handwritten signature in cursive script that reads 'James Kwong'.

James Kwong, Ph.D., PE  
Principal