



STATE OF HAWAII
STATE PROCUREMENT OFFICE
P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 587-4700 Fax: (808) 587-4703
<http://hawaii.gov/spo>

TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
HOUSE COMMITTEE
ON
ECONOMIC REVITALIZATION & BUSINESS

March 20, 2012

8:30 AM

SB 2582, SD2, HD1

RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE.

Chair McKelvey, Vice-Chair Choy and committee members, thank you for the opportunity to submit testimony on SB 2582, SD2, HD1. The State Procurement Office (SPO) understands the intent of the bill; however, fundamentally, does not support preferences and set-asides in the procurement code. Preference and set-aside processes impose preferential treatment and lengthens and complicates the procurement process.

It would be more beneficial to the entire group, if tax credits or incentives, subsidies, grants, or other business incentives were used to support the intent of this bill and not limit preferences/set-asides to only government contracts. The SPO opposes this bill.

Thank you.

TESTIMONY ON BEHALF OF THE HAWAII PROCUREMENT INSTITUTE
c/o 841 Bishop Street, Suite 2100, Honolulu, Hawaii 96813

TO THE HOUSE COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS

March 20, 2012

8:30 A.M.

SB 2582 SD2, HD1: Relating to Procurement

SUPPORTING THE INTENT OF SB2582, SD2, HD1 RELATING TO THE
HAWAII PROCUREMENT CODE, AND OFFERING COMMENTS

Chair McKelvey, Vice-Chair Choy, and Committee members, thank you for the opportunity to submit testimony in support of the intent of SB2582, SD2, HD1.

This bill clarifies that, of the 20% of the State's annual purchasing expenditure set aside to be awarded to small businesses, at least 3% shall be awarded to veteran owned and service disabled veteran owned small businesses having 50 or fewer employees.

The Hawaii Procurement Institute ("HPI") supports the intent of this bill as a valuable enhancement to the procurement code's existing small business preference. If implemented, it will result in increased contracting opportunities within the state and federal governments. However, HPI is concerned that the limitation of 50 or fewer employees will impair the bill's effectiveness and will be inconsistent with Hawai'i and federal procurement law and practice.

To refine the bill and achieve its full intent to support veteran-owned and service disabled veteran-owned small businesses, we recommend subsection (c) be revised to read:

"qualifies as a small business under the United States Small Business Administration ("SBA") size standards as adopted by the Hawaii Procurement Policy Board ("the Board"), pursuant to H.R.S. §103D-901."

This revision will make bill consistent with Hawai'i's existing law and federal practice. Existing practice recognizes that "small businesses" vary in number of employees and revenues according to the industry involved. The SBA size standards are flexible, simple to use, and are widely recognized by contractors because of their long use in the federal procurement system. More importantly, the SBA size standards are already embodied in Hawai'i procurement law governing small businesses contracting.

Under H.R.S. §103D-901, "[s]mall business' means a business that is **independently owned and defined by detailed criteria pursuant to rules adopted by the policy board . . . through detailed criteria that may include the number of employees and similar factors used by the United States Small Business Administration.**" The State Legislature recognized in H.R.S. § 103D-901 that size standards for small business must

vary according to industry and must change with the economic growth in each industry. Accordingly, the State Legislature determined that the Procurement Policy Board was best able to adjust size standards for small businesses in light of the available pool of contractors, the needs of the government, and conditions in each industry. Consistent with this grant of authority, the Board adopted the SBA guidelines to establish a state size standard for "small businesses" in 2008. (Procurement Directive No. 2008-06 in Subchapter 9 Small Business Preference Rules §3-124-71(b)(2)(A)).

The SBA small business size standards are listed in 13 C.F.R. §121.20, and are identified by industry using the North American Industry Classification System ("NAICS") codes. Under the SBA size standards, eligible "small businesses" are determined by assessment of the business' average annual revenue or employee count within each industry group.

The Board's 2008 adoption of the SBA size standards has clear and long-term advantages for qualified Hawai'i small businesses. The SBA size standards are widely understood by Hawai'i contractors because they are simple and they have been used routinely in federal procurement for decades. The use of SBA size standards will also maximize opportunities for Hawai'i veteran-owned small businesses to obtain federal contracts and assistance.

The federal small business preference programs have already had great success in helping Hawaii's small businesses, including companies owned by Native Hawaiian Organizations (NHOs). The federal system also offers training for small business on a full range of business administration needs. The State small business preference (including support for veteran owned small businesses) will afford local small businesses opportunities on State and local contracts to develop the kind of experience and a past performance record to be more competitive for federal contracts.

It is essential to continue using the SBA size standards that align Hawai'i's small businesses with federal procurement standards and practice. This will streamline the process of enabling Hawaii's small businesses to qualify for federal work, resulting in more jobs for local workers. Increased experience on state and local contracts will make Hawai'i's small businesses more capable and competitive for award and successful performance on federal contracts.

Use of the unnecessary and inconsistent "50 employee" size standard is directly contrary to the interests of local veteran owned businesses. It should be deleted from this bill.

Thank you for your efforts to improve procurement practices in Hawai'i and for affording us the opportunity to submit testimony.