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**TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE**

**TO THE
HOUSE COMMITTEE
ON
PUBLIC SAFETY & MILITARY AFFAIRS**

March 14, 2012

10:30 AM

SB 2582, SD2

RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE.

Chair Aquino, Vice-Chair Cullen and committee members, thank you for the opportunity to submit testimony on SB 2582, SD2. 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.

Thank you.

LATE TESTIMONY

TESTIMONY ON BEHALF OF THE HAWAII PROCUREMENT INSTITUTE
TO THE HOUSE COMMITTEE ON PUBLIC SAFETY & MILITARY AFFAIRS
March 13, 2012
10:30 A.M.
SB 2582 SD2: Relating to Procurement

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

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

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 existing small business preference within the procurement code that can result in increased contracting opportunities within the state and federal governments. However, HPI expresses concerns regarding the proposed language of the legislation.

To refine the bill and achieve its full intent to support veteran owned and service disabled veteran small businesses, we recommend the following amendments:

- The definition of "small business" already exists in Hawaii Revised Statutes ("H.R.S"). HPI's recommendation is to amend the bill regarding a qualifying "small business," to revise subsection (c) to read "qualifies as a small business based on average annual revenue according to the determinations provided by the United States Small Business Administration ("SBA") and adopted by the Hawaii Procurement Policy Board ("the Board"), pursuant to H.R.S. §103D-901."
- Therefore, because Hawaii Administrative Rules ("H.A.R.") § 3-124-70 (a)(2)(A) define "small business" according to federal SBA guidelines relating to average annual revenue, HPI recommends deleting the proposed requirement of 50 employees because it is unnecessary and inconsistent with already established law.

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.**" Because the definition of a small business is directly related to economic growth, the State Legislature determined that the Board is most qualified to create the definition.

Accordingly, in 2008 the Board adopted the SBA guidelines to establish a state definition of “small business.” (Procurement Directive No. 2008-06 in Subchapter 9 Small Business Preference Rules §3-124-71(b)(2)(A)).

The SBA small business determinations are listed in 13 C.F.R. §121.20, and identified by the North American Industry Classification System (NAICS) codes. A “small business” is determined by the average annual revenue within each industry group.

Since a method for determining a “small business” already exists, creating a new definition is unnecessary, and in fact would hinder the established procurement process for Hawaii’s small businesses.

The federal small business standards already adopted by the board are easy to use and are routinely applied throughout the federal government. Thus they have had great success in helping Hawaii’s small businesses qualify for federal contracts, including companies owned by Native Hawaiian Organizations (NHOs). The standards are commonly used and understood by Hawaii businesses and the SBA offers training for those seeking more information about the small business determinations.

It is essential to continue using these standards that align small businesses with federal procurement standards. 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 Hawaii’s small businesses more competitive for federal contracts.

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

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LATE TESTIMONY

GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 14, 2012

TO: HONORABLE REPRESENTATIVES HENRY AQUINO, CHAIR,
TY CULLEN, VICE CHAIR AND HOUSE COMMITTEE ON PUBLIC
SAFETY AND MILITARY AFFAIRS

SUBJECT: **COMMENTS & CONCERNS REGARDING S.B 2582, SD2, RELATING
TO HAWAII PUBLIC PROCUREMENT CODE.** 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. Effective 1/1/20.

HEARING

DATE: Wednesday, March 14, 2012
TIME: 10:30 a.m.
PLACE: Conference Room 309

Dear Chair Aquino, Vice Chair Cullen and Members of the Committee:

The General Contractors Association (GCA) is an organization comprised of over six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is celebrating its 80th anniversary this year; GCA remains the largest construction association in the State of Hawaii whose 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 **providing comments and concerns** regarding S.B. 2582, SD2, Relating to Hawaii Public Procurement Code. This bill would require that 3 percent of the already reserved 20 percent of the state's annual purchasing expenditures for small businesses, be awarded to veteran owned small businesses and service disabled veteran owned small businesses.

The GCA recognizes the many sacrifices and hardship endured by the veterans who served in our armed forces and supports efforts to rehabilitate and reintegrate them into our economy. However, our association has consistently maintained that procurement preferences for even good causes are misused many times and does not fully benefit their intended benefactors. For example, if this bill were to pass, entrepreneurs wanting to take advantage of the 3% proposed amount set aside for veterans, could elicit a veteran to be a 51% owner without having the veteran actually working in the business so that state projects could be won for the benefit of the company with the veteran simply taking his/her share. Furthermore, many times it is difficult to find veteran owned or service disabled veteran owned small businesses qualified to do the construction work needed, so that taxpayers need to pay an inordinate amount to find competitive qualified companies to participate or be satisfied with sub-standard work product in order to meet the veteran standards set. Even further, procurement preferences, such as the one

suggested in this bill, would increase the complexity in the procurement process, for example, by providing another avenue for protests when not administered properly, contrary to efforts to expedite the process. Finally, to administer such a program and to do it right may take already scarce resources away from procuring agencies to administer the program.

Please understand that GCA is not targeting veterans in this testimony. It is simply opining that using the procurement process is the wrong avenue to help veterans as well as any other persons needing assistance. Rather, more direct means such as vocational rehabilitation or tax incentives for businesses hiring veterans may be the better means to assist.

Accordingly, GCA recommends that this measure be held in the committee.

Thank you for the opportunity to testify on this bill.