
A BILL FOR AN ACT

RELATING TO CONSTRUCTION CONTRACTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. Section 103-53, Hawaii Revised Statutes, is
2 amended by amending subsection (e) to read as follows:
- 3 "(e) This section shall not apply to:
- 4 (1) Any procurement of less than \$25,000 or that is
5 considered a small purchase under section 103D-305 and
6 any state or county department contract of less than
7 \$25,000;
- 8 (2) Emergency purchases for the procurement of goods [~~7~~] or
9 services [~~7~~, ~~or~~, ~~construction~~] under section 103D-307 or
10 an emergency or disaster under chapter 127A;
- 11 (3) Grants disbursed by a state agency pursuant to chapter
12 42F or in accordance with standards provided by law as
13 required by article VII, section 4, of the state
14 constitution, or made by the counties pursuant to
15 their respective charters or ordinances;
- 16 (4) Contracts or agreements between government agencies;
- 17 (5) Contracts or agreements to disburse funds:



- 1 (A) To make payments to or on behalf of public
- 2 officials, officers, and employees for salaries,
- 3 fringe benefits, professional fees, and
- 4 reimbursements;
- 5 (B) To satisfy obligations required to be paid by
- 6 law, including fees, judgments, settlements, and
- 7 other payments for resolving claims;
- 8 (C) To make refunds or return funds held by the State
- 9 or county as trustee, custodian, or bailee;
- 10 (D) For entitlement programs, including public
- 11 assistance, unemployment, and workers'
- 12 compensation programs, established by state or
- 13 federal law;
- 14 (E) For deposit, investment, or safekeeping,
- 15 including sums to pay expenses related to their
- 16 deposit investment, or safekeeping;
- 17 (F) For loans under government-administered loan
- 18 programs; or
- 19 (G) To make periodic, recurring payments for utility
- 20 services;



1 (6) Rent for the use or occupation of the premises and
2 facilities at Aloha Stadium, the convention center, or
3 any other state or county large spectator events
4 facility; and

5 (7) Contracts or agreements of the Hawaii health systems
6 corporation and its regional system boards."

7 SECTION 2. Section 103D-102, Hawaii Revised Statutes, is
8 amended by amending subsection (b) to read as follows:

9 "(b) Notwithstanding subsection (a), this chapter shall
10 not apply to contracts by governmental bodies:

11 (1) Solicited or entered into before July 1, 1994, unless
12 the parties agree to its application to a contract
13 solicited or entered into prior to July 1, 1994;

14 (2) To disburse funds, irrespective of their source:

15 (A) For grants as defined in section 42F-101, made by
16 the State in accordance with standards provided
17 by law as required by article VII, section 4, of
18 the state constitution; or by the counties
19 pursuant to their respective charters or
20 ordinances;



- 1 (B) To make payments to or on behalf of public
- 2 officers and employees for salaries, fringe
- 3 benefits, professional fees, or reimbursements;
- 4 (C) To satisfy obligations that the State is required
- 5 to pay by law, including paying fees, permanent
- 6 settlements, subsidies, or other claims, making
- 7 refunds, and returning funds held by the State as
- 8 trustee, custodian, or bailee;
- 9 (D) For entitlement programs, including public
- 10 assistance, unemployment, and workers'
- 11 compensation programs, established by state or
- 12 federal law;
- 13 (E) For dues and fees of organizations of which the
- 14 State or its officers and employees are members,
- 15 including the National Association of Governors,
- 16 the National Association of State and County
- 17 Governments, and the Multi-State Tax Commission;
- 18 (F) For deposit, investment, or safekeeping,
- 19 including expenses related to their deposit,
- 20 investment, or safekeeping;
- 21 (G) To governmental bodies of the State;



- 1 (H) As loans, under loan programs administered by a
- 2 governmental body; and
- 3 (I) For contracts awarded in accordance with chapter
- 4 103F;
- 5 (3) To procure goods [7] or services [~~or construction~~]
- 6 from a governmental body other than the University of
- 7 Hawaii bookstores, from the federal government, or
- 8 from another state or its political subdivision;
- 9 (4) To procure the following goods or services [~~which~~]
- 10 that are available from multiple sources but for which
- 11 procurement by competitive means is either not
- 12 practicable or not advantageous to the State:
- 13 (A) Services of expert witnesses for potential and
- 14 actual litigation of legal matters involving the
- 15 State, its agencies, and its officers and
- 16 employees, including administrative quasi-
- 17 judicial proceedings;
- 18 (B) Works of art for museum or public display;
- 19 (C) Research and reference materials including books,
- 20 maps, periodicals, and pamphlets, which are



- 1 published in print, video, audio, magnetic, or
2 electronic form;
- 3 (D) Meats and foodstuffs for the Kalaupapa
4 settlement;
- 5 (E) Opponents for athletic contests;
- 6 (F) Utility services whose rates or prices are fixed
7 by regulatory processes or agencies;
- 8 (G) Performances, including entertainment, speeches,
9 and cultural and artistic presentations;
- 10 (H) Goods and services for commercial resale by the
11 State;
- 12 (I) Services of printers, rating agencies, support
13 facilities, fiscal and paying agents, and
14 registrars for the issuance and sale of the
15 State's or counties' bonds;
- 16 (J) Services of attorneys employed or retained to
17 advise, represent, or provide any other legal
18 service to the State or any of its agencies, on
19 matters arising under laws of another state or
20 foreign country, or in an action brought in
21 another state, federal, or foreign jurisdiction,



1 when substantially all legal services are
2 expected to be performed outside this State;
3 (K) Financing agreements under chapter 37D; and
4 (L) Any other goods or services which the policy
5 board determines by rules or the chief
6 procurement officer determines in writing is
7 available from multiple sources but for which
8 procurement by competitive means is either not
9 practicable or not advantageous to the State;

10 [and]

11 (5) Which are specific procurements expressly exempt from
12 any or all of the requirements of this chapter by:

13 (A) References in state or federal law to provisions
14 of this chapter or a section of this chapter, or
15 references to a particular requirement of this
16 chapter; and

17 (B) Trade agreements, including the Uruguay Round
18 General Agreement on Tariffs and Trade (GATT)
19 which require certain non-construction and non-
20 software development procurements by the



1 comptroller to be conducted in accordance with
2 its terms[-]; and
3 (6) To procure construction; provided that, with the
4 exception of construction procured pursuant to
5 paragraph (3), all other procurement contracts for
6 construction shall comply with the federal statutory
7 procurement requirements set forth under title 42
8 United States Code section 6962, as amended, and the
9 federal administrative procurement requirements set
10 forth under title 48 Code of Federal Regulations parts
11 1 to 9999, as amended; provided further that the
12 procurement officer shall comply with the rules of the
13 federal agency that is the closest counterpart to the
14 agency of the procurement officer, and if there is
15 none, then to the rules of the General Services
16 Administration under parts 500-599."

17 SECTION 3. Section 103D-104, Hawaii Revised Statutes, is
18 amended by deleting the definition of "design-build".

19 ~~["Design build" means a project delivery method in which~~
20 ~~the procurement officer enters into a single contract for design~~
21 ~~and construction."]~~



1 SECTION 4. Section 103D-302, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) An invitation for bids shall be issued, and shall
4 include a purchase description and all contractual terms and
5 conditions applicable to the procurement. [~~If the invitation
6 for bids is for construction, it shall specify that all bids
7 include the name of each person or firm to be engaged by the
8 bidder as a joint contractor or subcontractor in the performance
9 of the contract and the nature and scope of the work to be
10 performed by each. Construction bids that do not comply with
11 this requirement may be accepted if acceptance is in the best
12 interest of the State and the value of the work to be performed
13 by the joint contractor or subcontractor is equal to or less
14 than one per cent of the total bid amount.]"~~

15 SECTION 5. Section 103D-303, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§103D-303 Competitive sealed proposals.** (a) Competitive
18 sealed proposals may be used to procure goods, services, or
19 construction that are either not practicable or not advantageous
20 to the State to procure by competitive sealed bidding.



1 (b) Proposals shall be solicited through a request for
2 proposals.

3 (c) Notice of the request for proposals shall be given in
4 the same manner as provided in section 103D-302(c).

5 (d) Proposals shall be opened so as to avoid disclosure of
6 contents to competing offerors during the process of evaluation.
7 A register of proposals shall be prepared and shall be open for
8 public inspection after contract award.

9 (e) The request for proposals shall state the relative
10 importance of price and other evaluation factors.

11 (f) Discussions may be conducted with responsible offerors
12 who submit proposals determined to be reasonably likely to be
13 selected for a contract award for the purpose of clarification
14 to assure full understanding of, and responsiveness to, the
15 solicitation requirements. Offerors shall be accorded fair and
16 equal treatment with respect to any opportunity for discussion
17 and revision of proposals, and revisions may be permitted after
18 submissions and prior to award for the purpose of obtaining best
19 and final offers. In conducting discussions, there shall be no
20 disclosure of any information derived from proposals submitted
21 by competing offerors.



1 (g) Award shall be made to the responsible offeror whose
2 proposal is determined in writing to be the most advantageous,
3 taking into consideration price and the evaluation factors set
4 forth in the request for proposals. No other factors or
5 criteria shall be used in the evaluation. The contract file
6 shall contain the basis on which the award is made.

7 (h) In cases of awards made under this section, non-
8 selected offerors may submit a written request for debriefing to
9 the procurement officer within three working days after the
10 posting of the award of the contract. Thereafter, the
11 procurement officer shall provide the non-selected offeror a
12 prompt debriefing. Any protest by the non-selected offeror
13 pursuant to section 103D-701 following debriefing shall be filed
14 in writing with the procurement officer within five working days
15 after the date upon which the debriefing is completed.

16 ~~[(i) In addition to any other provisions of this section,~~
17 ~~construction projects may be solicited through a request for~~
18 ~~proposals to use the design-build method, provided that:~~

19 ~~(1) A request for proposals is issued to prequalify~~
20 ~~offerors to select a short list of no more than three~~
21 ~~responsible offerors, prior to the submittal of~~



1 ~~proposals; provided that the number of offerors to be~~
2 ~~selected for the short list shall be stated in the~~
3 ~~request for proposals and prompt notice is given to~~
4 ~~all offerors as to which offerors have been short-~~
5 ~~listed;~~

6 ~~(2) A conceptual design fee may be paid to non-selected~~
7 ~~offerors that submit a technically responsive~~
8 ~~proposal; provided that the cost of the entire project~~
9 ~~is greater than \$1,000,000; and~~

10 ~~(3) The criteria for pre-qualification of offerors, design~~
11 ~~requirements, development documents, proposal~~
12 ~~evaluation criteria, terms of the payment of a~~
13 ~~conceptual design fee, or any other pertinent~~
14 ~~information shall be stated in the request for~~
15 ~~proposals.] "~~

16 SECTION 6. Section 103D-305, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§103D-305 Small purchases; prohibition against parceling.**

19 (a) Procurements of less than \$100,000 for goods or services [~~7~~
20 ~~or \$250,000 for construction]~~ shall be made in accordance with
21 procedures set forth in rules adopted by the policy board that



1 are designed to ensure administrative simplicity and as much
2 competition as is practicable; provided that multiple
3 expenditures shall not be created at the inception of a
4 transaction or project so as to evade the requirements of this
5 chapter; and provided further that procurement requirements
6 shall not be artificially divided or parceled so as to
7 constitute a small purchase under this section.

8 ~~[(b) Procurements greater than \$50,000 for construction~~
9 ~~under subsection (a) shall require security by performance and~~
10 ~~payment bonds, pursuant to section 103D-324, delivered to the~~
11 ~~procurement officer, that are:~~

- 12 ~~(1) In a form prescribed by the rules of the policy board;~~
13 ~~(2) Executed by a surety company authorized to do business~~
14 ~~in this State; and~~
15 ~~(3) In an amount equal to one hundred per cent of the~~
16 ~~price specified in the contract,~~

17 ~~or shall otherwise be secured by a performance bond in a manner~~
18 ~~satisfactory to the procurement officer.~~

19 ~~(e)]~~ (b) Procurements of \$25,000 to less than \$250,000
20 shall be made in accordance with small purchase procedures;



1 provided that [~~such~~] the small purchase procurements through an
2 electronic system shall be required."

3 SECTION 7. Section 103D-306, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) A contract may be awarded for goods[~~7~~] or services[~~7~~
6 ~~or construction~~] without competition when the head of a
7 purchasing agency determines in writing that there is only one
8 source for the required good[~~7~~] or service[~~7~~ ~~or construction~~],
9 the determination is reviewed and approved by the chief
10 procurement officer, the written determination is posted in the
11 manner described in rules adopted by the policy board, and no
12 objection is outstanding. The written determination, any
13 objection, and a written summary of the disposition of any
14 objection shall be included in the contract file."

15 SECTION 8. Section 103D-307, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) The head of a purchasing agency may obtain a good[~~7~~]
18 or service[~~7~~ ~~or construction~~] essential to meet an emergency by
19 means other than specified in this chapter when the following
20 conditions exist:



- 1 (1) A situation of an unusual or compelling urgency
2 creates a threat to life, public health, welfare, or
3 safety by reason of major natural disaster, epidemic,
4 riot, fire, or such other reason as may be determined
5 by the head of that purchasing agency;
- 6 (2) The emergency condition generates an immediate and
7 serious need for goods [7] or services [~~7-or~~
8 ~~construction~~] that cannot be met through normal
9 procurement methods and the government would be
10 seriously injured if the purchasing agency is not
11 permitted to employ the means it proposes to use to
12 obtain the goods [7] or services [~~7-or-construction~~];
13 and
- 14 (3) Without the needed good [7] or service, [~~or~~
15 ~~construction~~7] the continued functioning of
16 government, the preservation or protection of
17 irreplaceable property, or the health and safety of
18 any person will be seriously threatened."

19 SECTION 9. Section 103D-311, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:



1 "(a) The policy board may adopt rules to prequalify
2 prospective suppliers for particular types of goods[~~7~~] and
3 services[~~7~~, ~~and construction~~] or to limit a solicitation to
4 prequalified vendors to meet statutory or licensing requirements
5 applying to the solicitation or when the time necessary to
6 verify vendor qualifications would jeopardize timely award of
7 contracts."

8 SECTION 10. Section 103D-313, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) Cost-reimbursement and cost-plus-a-percentage-of-cost
11 contracts may be used only when the chief procurement officer
12 determines in writing that such a contract is likely to be less
13 costly than any other type of contract or that it is
14 impracticable to obtain the goods[~~7~~] or services[~~7~~, ~~or~~
15 ~~construction~~] required except by means of such a contract.
16 Cost-reimbursement and cost-plus-a-percentage-of-cost contracts
17 shall not be used if their use would jeopardize the receipt of
18 federal assistance moneys or reduce the amount of [~~such~~] the
19 assistance under any applicable federal statute or regulation."

20 SECTION 11. Section 103D-324, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) Unless the policy board determines otherwise by
2 rules, the following bonds or security shall be delivered to the
3 purchasing agency and shall become binding on the parties upon
4 the execution of the contract if [~~the contract which is awarded~~
5 ~~exceeds \$25,000 and is for construction, or~~] the purchasing
6 agency secures the approval of the chief procurement officer:

7 (1) A performance bond in a form prescribed by the rules
8 of the policy board, executed by a surety company
9 authorized to do business in this State or otherwise
10 secured in a manner satisfactory to the purchasing
11 agency, in an amount equal to one hundred per cent of
12 the price specified in the contract;

13 (2) A payment bond in a form prescribed by the rules of
14 the policy board, executed by a surety company
15 authorized to do business in this State or otherwise
16 secured in a manner satisfactory to the purchasing
17 agency, for the protection of all persons supplying
18 labor and material to the contractor for the
19 performance of the work provided for in the contract.
20 The bond shall be in an amount equal to one hundred
21 per cent of the price specified in the contract; or

1 (3) A performance and payment bond which satisfies all of
2 the requirements of paragraphs (1) and (2)."

3 SECTION 12. Section 103D-802, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§103D-802 Cooperative purchasing authorized.** A public
6 procurement unit may either participate in, sponsor, conduct, or
7 administer a cooperative purchasing agreement for the
8 procurement of goods [7] or services [~~7-or-construction~~] with one
9 or more public procurement units, external procurement units, or
10 nonprofit private procurement units pursuant to rules adopted by
11 the policy board and an agreement entered into between the
12 participants. The cooperative purchasing may include [7] but
13 shall not be limited to [7] joint or multi-party contracts
14 between public procurement units, and state public procurement
15 unit requirements contracts [which] that are made available to
16 local public procurement units. Cooperative purchasing
17 agreements may be exempt from preferences pursuant to part X."

18 SECTION 13. Section 103D-904, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**[+]§103D-904[+]** **Geographic bidding.** The chief
21 procurement officer may utilize geographic bidding in providing



1 goods [7] and services [~~7 and construction~~] to best meet the needs
2 of the State."

3 SECTION 14. Section 103D-303.5, Hawaii Revised Statutes,
4 is repealed.

5 [~~"§103D-303.5 Pre-bid conference. (a) At least fifteen~~
6 ~~days prior to submission of bids pursuant to section 103D-302~~
7 ~~for a construction or design-build project with a total~~
8 ~~estimated contract value of \$500,000 or more, and at least~~
9 ~~fifteen days prior to submission of proposals pursuant to~~
10 ~~section 103D-303 for a construction or design-build project with~~
11 ~~a total estimated contract value of \$100,000 or more, the head~~
12 ~~of the purchasing agency shall hold a pre-bid conference and~~
13 ~~shall invite all potential interested bidders, offerors,~~
14 ~~subcontractors, and union representatives to attend.~~

15 ~~(b) The procurement policy board shall adopt rules under~~
16 ~~chapter 91 to effectuate this section."~~]

17 SECTION 15. Section 103D-323, Hawaii Revised Statutes, is
18 repealed.

19 [~~"§103D-323 Bid security. (a) Unless the policy board~~
20 ~~determines otherwise by rules, bid security shall be required~~
21 ~~only for construction contracts to be awarded pursuant to~~



1 ~~sections 103D-302 and 103D-303 and when the price of the~~
2 ~~contract is estimated by the procurement officer to exceed~~
3 ~~\$25,000 or, if the contract is for goods or services, the~~
4 ~~purchasing agency secures the approval of the chief procurement~~
5 ~~officer. Bid security shall be a bond provided by a surety~~
6 ~~company authorized to do business in the State, or the~~
7 ~~equivalent in cash, or otherwise supplied in a form specified in~~
8 ~~rules.~~

9 ~~(b) Bid security shall be in an amount equal to at least~~
10 ~~five per cent of the amount of the bid.~~

11 ~~(c) Unless, pursuant to rules, it is determined that a~~
12 ~~failure to provide bid security is nonsubstantial, all bids~~
13 ~~required to be accompanied by bid security shall be rejected~~
14 ~~when not accompanied by the required bid security.~~

15 ~~(d) After the bids are opened, they shall be irrevocable~~
16 ~~for the period specified in the invitation for bids, except as~~
17 ~~provided in section 103D-302(g). If a bidder is permitted to~~
18 ~~withdraw its bid before award, no action shall be had against~~
19 ~~the bidder or the bid security."]~~

20 SECTION 16. Section 103D-407, Hawaii Revised Statutes, is
21 repealed.



1 ~~["§103D-407—Construction projects, roadway materials;~~
2 ~~recycled glass content requirements. (a) When purchasing~~
3 ~~roadway materials or other high value, end use applications for~~
4 ~~public projects, state and county agencies may purchase~~
5 ~~materials with minimum recycled glass content meeting~~
6 ~~specifications adopted by the policy board which, at a minimum,~~
7 ~~shall provide for:~~

8 ~~(1) A minimum recycled glass content of ten per cent~~
9 ~~crushed aggregate in treated or untreated basecourse~~
10 ~~in paving materials that shall not reduce the quality~~
11 ~~standards for highway and road construction; and~~

12 ~~(2) The use of one hundred per cent aggregate in~~
13 ~~nonstructural capital improvement applications.~~

14 ~~(b) All highway and road construction and improvement~~
15 ~~projects funded by the State or a county or roadways that are to~~
16 ~~be accepted by the State or a county as public roads may use a~~
17 ~~minimum of ten per cent crushed glass aggregate as specified by~~
18 ~~the department of transportation in all basecourse (treated or~~
19 ~~untreated) and subbase when the glass is available to the quarry~~
20 ~~or contractor at a price no greater than that of the equivalent~~
21 ~~aggregate.~~



1 ~~(c) All state and county construction projects calling for~~
2 ~~nonstructural backfill shall utilize one hundred per cent~~
3 ~~crushed glass when available at a cost equal to or lower than~~
4 ~~the equivalent aggregate.~~

5 ~~(d) As used in this section:~~

6 ~~"Basecourse" means the layer or layers of specified~~
7 ~~material or selected material of a designed thickness to support~~
8 ~~a surface course.~~

9 ~~"Environmental management special fund" means the fund~~
10 ~~established by section 342G-63.~~

11 ~~"Nonstructural backfill" means use as fill in areas not~~
12 ~~subject to structural loading, including but not limited to~~
13 ~~utility line bedding, drainage backfill behind retaining walls,~~
14 ~~drainage line backfill in leachfields or french drains, and~~
15 ~~similar uses."]~~

16 SECTION 17. This Act does not affect rights and duties
17 that matured, penalties that were incurred, and proceedings that
18 were begun before its effective date.

19 SECTION 18. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 19. This Act shall take effect upon its approval.

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INTRODUCED BY:

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H.B. NO. 2544

Report Title:

Procurement Code; Construction; Federal Requirements

Description:

Subjects the procurement of construction contracts to federal procurement laws.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



DAVID Y. IGE
GOVERNOR



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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
ECONOMIC DEVELOPMENT & BUSINESS

February 5, 2016, 9:01AM

House Bill No. 2544
RELATING TO CONSTRUCTION CONTRACTS

Chair Kawakami, Vice-Chair Kong, and members of the committee, thank you for the opportunity to submit testimony on HB 2544. The State Procurement Office (SPO) opposes this measure.

The Hawaii Public Procurement Code (Code) is the single source of public procurement policy to be applied equally and uniformly, while providing fairness, open competition, a level playing field, government disclosure and transparency in the procurement and contracting process vital to good government.

One of public procurement's primary objectives is to provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion, or fraud in awarding of contracts. Another critical objective is to ensure disclosure and public visibility into the way taxpayer dollars are being spent. As such, along with open competition, the Code provides safeguards to ensure procurement integrity, determination of fair and reasonable pricing, public notice, transparency, and a clear due process mechanism for aggrieved bidders. The Code also provides consistency in the manner in which purchasing agencies procure goods, services, and construction.

The proposed amendments and repeals in this bill mean that all procurements made with taxpayer monies will not have the same oversight, accountability, and transparency requirements mandated by those procurements processes provided in the Code. It also means adhering to the Code's procurement integrity laws will not be required.

This measure, and the Federal Acquisition Regulation (FAR) itself, will not be self-executing and will require, and result in, an entire overhaul of public works construction procurement practices, procedures, and industry in Hawaii. Implementation of the proposed amendments by agencies and jurisdictions will be an extensive, statewide undertaking, requiring expertise, staffing, training, and funding resources. Since this measure exempts these procurements from the procurement code and makes no provision for uniform, statewide implementation, the onus will fall on each agency and jurisdiction conducting construction to develop processes, procedures, templates, contract terms and conditions, and reporting requirements compliant with the FAR.

For instance, agencies and jurisdictions will be required to conduct a detailed examination and meticulous side-by-side comparisons of the Hawaii procurement environment, procurement related statutes and rules with the federal code, and the challenges thereto will need to be resolved. The mere exercise in cross-walking State terminology to equivalent federal terminology will be a herculean task. And, with no unifying oversight, each agency may interpret and “crosswalk” terms differently. For example, finding State terms equivalent to federal “contracting officers”, “senior contracting officials”, “administrative contracting officers,” “Chief Acquisition Officers,” including the procurement authority associated with each under FAR will be daunting.

Agencies and jurisdictions must make an assessment of the logistical requirements and anticipated costs (monetarily and culturally, taking into account governance and infrastructure) of rewriting the Hawaii Code to adapt to the Federal Code. This must be seriously considered as adaptation not only affects State agencies, but all Chief Procurement Officer (CPO) Jurisdictions.

The SPO respectfully notes the following impacts regarding the reality of a wholesale replacement of the procurement code in HRS 103D for our Agencies’ construction contracts as well as our construction industry who bid on public works contracts:

1. The measure states it will become effective upon its approval. On day one, all upcoming and open construction solicitations and projects will come to a halt. Each of those solicitations must be reviewed and revised in accordance with the requirements for equivalent solicitations under FAR. Each will need to include applicable FAR terms and conditions mandated by each FAR chapter and memorialized in FAR Part 52, Solicitation Provisions and Contract Clauses. Attached for your consideration herein is FAR Part 52.301, a matrix of all FAR solicitation and contract clauses, including their alternatives and their associated instances for mandatory inclusion in solicitations and contracts.
2. There will be some federal code procurement requirements that are more restrictive than the current State procurement code which may slow down the procurement process and possibly limit competition. SPO has particular concern for agencies who perform state public works contracts and construction projects subject to federal grant funding. Based on this measure, those unfortunate agencies will be required to comply with the FAR for state projects but for projects subject to federal funds they will be required to follow their granting agencies associated OMB circular or the new Uniform Administrative Requirements, which are not as onerous as FAR.

The National Association of State Procurement Officials state: “Businesses suffer when there is inconsistency in procurement laws and regulations. Complex, arcane procurement rules of numerous jurisdictions discourage competition by raising the costs to businesses to understand and comply with these different rules. Higher costs are recovered through the prices offered by a smaller pool of competitors, resulting in unnecessarily inflated costs to state and local governments.”

In addition, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the Super Circular), that applies to all States awarded federal grants, starts with the mandate that State’s must follow their own procurement code when making procurements with federal money. So if there is no provision in State law for construction other than to follow the FAR, then the State may miss out on being under this “Super Circular” and having to comply with the more onerous FAR requirements if there is no State established procurement system in place.

3. The extent of the transition from one set of regulations to a new set will be immense for the departments and state jurisdictions to implement and manage. The effects will be seen in increased funding request, change management, infrastructure requirements and training.

Much of the current State code is already aligned with the federal code, but uniform guidance will need to be established and imposed in order to ensure agencies comply with the FAR in a consistent manner. Since no agency will be administering this new paradigm SPO envisions disparate, inconsistent and unequal implementation across the state. In addition, a public body will no longer achieve the benefits of aggregation by using another public body's contract because different state laws and regulations may apply to the various public bodies making compliance more difficult.

4. With Hawaii being one of the most decentralized States when it comes to procurement, a major concern will be to provide adequate training to personnel not familiar with the FAR, a much more complex regulation and standards to comprehend. The contracting officers and procurement specialists conducting procurements under the FAR are a highly trained and skilled workforce. Federal agencies invest millions in sending their acquisition professionals to FAR-specific training developed and conducted by experts in the field of federal acquisition. These FAR acquisition professionals progress professionally based on their level of training and associated certifications. This level of training is required for such a daunting federal code to ensure the basic goals of all government procurement are met.
5. The FAR requires large amounts of reporting and metrics. While these are goals that the State intends to ultimately reach over time, the immediate requirement will burden the current infrastructure, require a large dollar funding, additional civil service staffing, staff reorganizations, increased salary requirements, and the development of multiple procurement databases that will manage federal requirements such as past performance, small business administration, source selection, and vendor coding.
6. Based on the proposed amendments and repeals of this bill, the SPO will have no role to play and will not be responsible for implementation or compliance with the FAR. As a result, it will fall solely to Agencies to implement the proposed amendments and determine how to comply with the FAR, which may take up to at least a year at the Agency level. During that interim SPO predicts little to no construction solicitations will be issued due to agency inability to transition to a FAR paradigm in a timely manner. As a result, new solicitations and contracts will come to a halt because all of the above requirements need to happen before a new code can be implemented, which is not in the best interest of the government, the business and construction industries, and the general public.
7. Section 2, Page 8, Para (6) states that construction will not be part of the procurement code, except for any construction procured pursuant to Chapter 43F or standards provided by law, or made by the counties. This means that State Agencies will have to be versed in two different sets of procurement regulations that is State as well as Federal. They would need to keep two separate sets of books, trainings, code updates, required reporting, and contract file and monitoring requirements, and will undoubtedly have to double their resources or be facing a large additional burden to their time, budget and resources.
8. The effect this measure will have on Hawaii's construction industry bidding on public works construction projects cannot be underestimated. As stated above, the Hawaii public procurement code already broadly conforms with federal procurement law. But, it can be argued that the Hawaii code is not as onerous or as complex as FAR requirements. As such, Hawaii contractor's will also have to expend considerable resources in seeking advice, consultation and training in order to operate in this a complicated FAR environment.

The SPO respectfully notes the following observations and impacts in regards to the reality of a total replacement of the procurement code in HRS 103D for construction contracts overall:

1. Training and governance will include FAR training with higher-level certification requirements, a help desk; changes to various other Hawaii statutes (such as the Labor and Construction statutes), Rules and County Charters referencing the new Code; and the creation of new policy, directives, and circulars to provide guidance.
2. An in-depth, long-term change management plan will need to be developed and implemented over this period as the State moves over to the federal code. Additional funds for outsourcing to subject matter experts will be required since agencies may not have skilled resources in-house to effectuate this change.
3. With the implementation of the FAR, agencies/jurisdictions will need to implement a new protest process as the measure would effectively eliminate Part VII of HRS Chapter 103D governing procurement protests for construction. As stated above, the FAR will not be self-executing and the exemption from the procurement code effectively imposes on aggrieved parties the requirement to appeal to the Federal Government Accounting Office (GAO). This is an unclear protest process for aggrieved parties that would involve the procuring agency and, at least in the federal system, the Government Accounting Office to take jurisdiction over these cases. Extensive coordination and advice will be required from the Attorney General's office concerning whether the GAO would even have jurisdiction over or accept these cases.

The Code already offers a legal and contractual remedy process to resolve protested solicitations and awards, to provide fairness and consistency, and due process for vendors/contractors, which includes impartial reviews by the Department of Commerce and Consumer Affairs (DCCA) Office of Administrative Hearings (OAH) process and the ability to request judicial review. The current protest process also protects agencies and taxpayers from onerous and baseless protests, minimizes delays and disruptions in the award of contracts, and supports a prompt resolution.

For instance, the 2012 Legislature imposed a strict 45 day time limit and requirements of a minimum amount in controversy and a protest bond, which has resulted in fewer protests and the protests received have been limited to major issues, which are promptly resolved once they get to OAH. Federalism and state due process requires Hawaii provide a realistic and reasonable avenue for protest.

4. By replacing the Code, in order to ensure a prospective offeror has the financial ability, resources, skills, capability, and business integrity necessary to perform the work, agencies/jurisdictions will need to implement new procedures to verify the prospective offeror is in compliance with all applicable state laws.

For instance, to ensure all vendors/contractors who seek public contracts compete on equal footing they are required to demonstrate compliance with Hawaii laws. The Code requires potential vendors/contractors comply with Hawaii laws prior to award of a contract, i.e. DOTAX Tax Clearance Certificate including IRS certification, DLIR Certificate of Compliance; DCCA Certificate of Good Standing; or Hawaii Compliance Express (HCE) Certificate of Vendor Compliance. Upon completion of goods delivered, services performed, or construction completion, and before final payment is made, a vendor/contractor is again required to demonstrate compliance with Hawaii laws, thereby assuring that public funds are paid to compliant vendors/contractors. This measure effectively removes all of these requirements for construction contracts thus removing the key elements utilized by agencies to aid in making contractor responsibility determinations.

5. In order to ensure the replacement to federal code would stand, the Hawaii Legislature would need to commit to exclude themselves from submitting any future procurement code changes related to construction as this would morph the Code back into a customized code specific to Hawaii, diminishing the original intent to follow the federal code and, in fact, federalism itself.

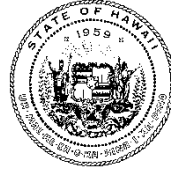
For instance, the Code enables the legislature to impose specific requirements to eliminate practices that are detrimental to the public's perception of government procurement. The legislature passed and the governor signed into law, Act 52 (2003), amending section 103D-304, HRS, to require that all contract awards to professional service providers be made based upon the merits of the provider, and not upon any other factors; thereby reaffirming the public's understanding that professional service contracts are not awarded to companies based on political affiliation or amount of political contributions. Ironically, Hawaii adopted these changes to better align itself with federal law in the area of professional design services procurements. The Code also enables legislature to promote specific segments of the State's economy and encourage the development of new products and technologies through preferences allowed by the Code. However, preference programs apply only to agencies subject to the Code, and exempt agencies are not subject to the legislature's designated preferences.

The bill repeals State procurement code 103D for construction contracts, however, there is no reason and/or justification given to substantiate or explain what is prompting the Legislature to take such drastic action. As a result, for SPO, it was difficult to submit testimony other than "opposition," as the intent or the goal of this bill is elusive. Therefore, the successful achievement of a fully-fledged federal code implementation across the State upon approval of this bill is extremely remote.

Each year new procurement laws are applied to state agencies causing state agency contracts to become more complex and costly. By excluding public bodies from compliance with a common set of legal requirements creates an imbalance wherein the competitive environment becomes different among the different jurisdictions and the entire procurement process becomes less efficient and more costly for the State and vendors/contractors. Those who lack a working knowledge of the Code, may view it as a cumbersome process, while the SPO believes that it is vital to good government to have a fair and consistent process to award government contracts that hold agencies responsible and accountable for their actions.

Thank you.

8DAVID Y. IGE
GOVERNOR



DOUGLAS MURDOCK
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

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

WRITTEN TESTIMONY
OF
DOUGLAS MURDOCK, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
ECONOMIC DEVELOPMENT & BUSINESS
ON
FEBRUARY 5, 2016

H.B. 2544

RELATING TO CONSTRUCTION CONTRACTS

Chair Kawakami and members of the Committee, thank you for the opportunity to submit written testimony on H.B. 2544.

The Department of Accounting and General Services (DAGS) opposes this measure and offers alternative solutions. As a first and preferred alternative, we recommend allowing the state Procurement Policy Board the opportunity to review and recommend new state administrative rule based on the Model State Procurement Code on Infrastructure Procurement and/or select portions of the Federal Acquisition Regulation (FAR). As a second alternative, we recommend you defer the effective date to July of 2018 to give state agencies time train and prepare for a FAR-based system, while also allowing the Procurement Policy Board to exempt state agencies from certain requirements of the FAR.

Prior to my current position, I served in the Air Force for 25 years and regularly worked on federal procurement issues. In my last assignment, I was the Staff Judge Advocate (chief legal counsel) to Electronic Systems Command, which had a procurement portfolio of over five

billion dollars in contracts. More recently, I have experience working in the state procurement system and have twice served on the Hawaii Procurement Policy Board.

The FAR is excellent, but it exists in an environment very different from the state. It is part of bigger system that includes a substantial governance and support system. Using the FAR for state public works would essentially be operating the FAR in a vacuum. It would be like having a race car without wheels and a driver.

In addition, abruptly subjecting public works procurement to the FAR will create chaos and may delay new public works projects for years. The current state system, however imperfect, works because of the experience and dedication of state employees and contractors. Changing the system without time for change management will result in confusion for both State agencies and for the contractors who participate in our State construction programs. It would open the door for increased protests, and fewer projects would be awarded for the benefit of State facility users and the public.

The FAR allows for modifications through the FAR Council process and for supplementation by using agencies. Before implementing a FAR-based system, the state must take the time to consider what modifications, supplements and resources are needed to allow it to run effectively.

DAGS recommends that more careful review and development of the purpose, the goals, the impacts, and the implementation plan be completed prior to sweeping reform. Not all federal requirements are readily adaptable nor applicable to State procurement. A comparative study of the pro's and con's between the State vs. Federal procurement codes, along with development of an implementation plan that includes guidelines and training would allow for the realization of a more effective new code that incorporates the best of both programs.

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



The Judiciary, State of Hawaii

Testimony to the House Committee on Economic Development and Business

Representative Derek S.K. Kawakami, Chair

Representative Sam Satoru Kong, Vice Chair

Friday, February 5, 2016, 9:01 a.m.
State Capitol, Conference Room 312

By

Joanne Krippaehne

Architect, Capital Improvements Program

Bill No. and Title: House Bill No. 2544, Relating to Construction Contracts.

Purpose: Mandate federal statutory requirements relating to construction contracts.

Judiciary's Position:

The Judiciary neither supports nor opposes House Bill No. 2544 but offers the following comments on this measure:

1. The bill does not appear to provide for a transition plan. Section 19 states this Act shall take effect upon its approval. A transition plan would provide for comparison of systems and reasonable and orderly migration of policies, procedures and paperwork to implement a Federal system at the State level. Review during such transition should examine whether there might be implications for application of State case law. Limited transition time may result in loss of funding for current Capital Improvement Projects and/or delay of completion.
2. The bill also does not appear to provide for or address the following areas:
 - **Capital Works in Progress.** Lack of guidelines in this bill make it unclear as to which ongoing projects the new requirements might apply or at what stage they would transition.



House Bill No. 2544, Relating to Construction Contracts
House Committee on Economic Development and Business
February 5, 2016
Page 2

- **Organizational Structure.** Without providing for an organizational structure to administer construction under Federal requirements, it is unclear how education/training would be fulfilled under the new Federal system to the State staff who procure and administer capital improvement programs.
- **Emergency Procurement.** How would construction be procured in an emergency to deal with natural disasters, unforeseen infrastructure failures or other emergencies? Any delay in repairs could pose a threat to the health and safety of employees and/or the public.
- **Design/Build.** Design/build does not appear to be recognized as an option for future consideration.

Thank you for this opportunity to testify on House Bill No. 2544.



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LT. GOVERNOR

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CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON
ECONOMIC DEVELOPMENT & BUSINESS

TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2016

Date: Friday, February 5, 2016

Time: 9:01 a.m.

Conference Room: 312

TESTIMONY FOR HEARING ON HOUSE BILL NO. 2544
RELATING TO CONSTRUCTION CONTRACTS

TO THE HONORABLE DERRICK S.K. KAWAKAMI, CHAIR,
AND THE HONORABLE SAM SATORU KONG, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE

The Office of Administrative Hearings (“OAH”) of the Department of Commerce and Consumer Affairs (“DCCA”) appreciates the opportunity to offer comments on S.B. No. 2499, Relating to Construction Contracts. My name is David Karlen, and I am the Senior Hearings Officer of the OAH.

OAH and DCCA has strong concerns with the portions of the bill that would eliminate the procurement protest provisions of Part VII of Chapter 103D, Hawaii Revised Statutes (“Procurement Code”).

As background, the OAH has administered hearings on procurement protests since the Procurement Code was established in 1993. Given its experience in this area,

the OAH believes the current law, following its amendment by Act 173, Session Laws of Hawaii 2012, has substantially streamlined and strengthened the procurement protest process. For example, OAH has observed an approximately 50% reduction in the number of procurement protests it receives following the enactment of Act 173. Also, OAH has seen a welcome focus on important contracts and better presentation of the controversies in protest actions following a change in the law to require a tighter calendar for appeals, a focus on major issues (including a higher amount-in-controversy requirement), and the requirement for a substantial protest bond. As the current protest provision portions of the Procurement Code are working well, these provisions should not be eliminated in favor of a federal-type system that lacks the same safeguards and reforms currently in Hawaii's law.

Further, the bill requires selection of a federal agency's procurement regulations, with the General Services Administration rules being the "default rules" if there is no comparable federal agency. Those rules provide for appeals of agency procurement protest determinations to either the agency's Board of Contract Appeals, an administrative tribunal, or the United States Court of Claims. The State of Hawaii, however, has no agency boards of contract appeals, nor does it have a special claims court.

While OAH takes no position on other aspects of procurement impacts of this bill, OAH requests the Committee consider including the following language in order to retain the benefits of an orderly appeals process for initial agency decisions on procurement protests under the current law:

Anything in this Act to the contrary notwithstanding, the provisions of sections 103D-709 through 103D-712 shall remain in full force and effect.

Thank you for the opportunity for OAH to provide its comments on this proposed legislation.

LATE

DAVID Y. IGE
GOVERNOR



KATHRYN S. MATAYOSHI
SUPERINTENDENT

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

Date: 02/05/2016

Time: 09:01 AM

Location: 312

Committee: House Economic Development &
Business

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: HB 2544 RELATING TO CONSTRUCTION CONTRACTS.

Purpose of Bill: Subjects the procurement of construction contracts to federal procurement laws.

Department's Position:

The Department of Education respectfully opposes HB2544. The effect of this law would create two separate regulatory paths for procurement and contracting activities for any governmental agency involved in construction projects.

Adoption of the Federal rules would necessitate an onerous process of establishing competency with a wide spectrum of staff involved in construction projects that are wholly unfamiliar with the Federal requirements. This would not only be procurement staff, but project managers, architects, and engineers which will need to understand the new regulatory environment they will operate in. In addition, operational policies and protocols will need to be developed to implement the new requirements that will need to be developed from scratch. Even the most basic of forms to document the process would need to be developed along with an operational work flow and the bureaucracy to implement it. This would be an immense undertaking requiring resources, time and money. Such an undertaking is not to be embarked upon lightly, and it is unclear if the benefits, if any would offset the cost.

The adoption of the Federal requirements would also have the unintended consequence of subjecting the Hawaii Process to rulings by any court that has jurisdiction over Federal matters. Events that have little or no relation to conditions in Hawaii will have binding legal effect from the Federal bench. Precedent from the local judicial system will no longer hold sway and the principles the industry have operated under and the predictability that it entailed will be set aside.

Finally, the legislation would create two separate regulatory environments for procurement and contracting. This would require an increase in staffing and related resources to administer both systems. Given the complexity and specialization to effectively manage a procurement operation, and the high volume of work the Department of Education transacts, this legislation

would require the establishment of one set of cadre to administer construction, and a wholly separate set to administer the procurement of goods and services for the laws still governed by the Hawaii Procurement Code. The existence of two wholly independent regulatory environments will cause confusion, waste, and uncertainty that offset any benefits the Federal system may entail.

Thank you for the opportunity to testify in opposition of HB2544.

IRONWORKERS STABILIZATION FUND

February 3, 2016

Derek Kawakami, Chair
Committee on Economic Development and Business
House of Representative
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Dear Honorable Chair Kawakami and Members of the Committee on Economic Development and Business:

Re: Strong Opposition for HB2544 – Relating to Construction Contracts

We are in strong opposition of HB2544, Relating to Construction Contracts; that subjects the State of Hawaii procurement laws to the federal procurement laws.

The purpose of this bill will do away with most of our safe guards for the general public and small businesses. This bill will not only hurt small businesses, but also will not save the state government monies. If you look at the federal procurement laws they have a lot cost overruns and change orders. We also know that most of our signatory companies will not bid for Federal Projects due to the fact that they do not have subcontractor listing and will not get the job. This means companies not tied to Hawaii will get the job and bring their own men from other States to do the job. Our working men and women will not get the jobs.

Consequently for these reasons we oppose this measure for the working men and women of Hawaii. Thank you for your time and consideration.

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

February 5, 2016

Testimony To: House Committee on Economic Development & Business
Representative Derek S.K. Kawakami, Chair

Presented By: Tim Lyons, President

Subject: H.B. 2544 - RELATING TO CONSTRUCTION CONTRACTS

Chair Kawakami and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we offer some comments on this bill. The SAH represents the following nine separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

We cannot support this bill as written primarily because Section 4 deletes the provisions for the Subcontractor Listing Clause as stated in 103D-302 (b) which, as we have testified earlier, we think will cause major problems in the construction process.

We would also like this Committee to note that most of our contractors have stated that they do not participate in federal procurement jobs. The prime reason that they cite is the lack of a subcontractor listing clause. We have not however had an opportunity to discuss with them if there are some favorable parts of the federal procurement process thus giving us a reason to endorse the concept of federal procurement laws being embodied in state law. We will attempt to do that as the process goes on however we must object to the deletion and repeal of the Subcontractor Listing Clause. Even the Procurement Task Force did not make that recommendation after studying it for a year and a half.

Based on the above, we object to that portion of this bill and will look further at the remainder of the bill.

Thank you.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Economic Development & Business
Friday, February 5, 2016 at 9:01 A.M.
Conference Room 312, State Capitol**

RE: HOUSE BILL 2544 RELATING TO PROCUREMENT

Chair Kawakami, Vice Chair Kong, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 2544 and its companion bill, S.B. 2499, which proposes to amend Chapter 103 HRS by requiring the procurement of construction contracts to federal procurement laws.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The procurement process is in need of improvement. Business and the public want an open, competitive and transparent procurement process. The procurement process must also be timely in the selection and payment for goods and services. In addition, the State is looking for the best value, not necessarily the lowest price.

We know of many small businesses in Hawaii that do not pursue work from the State of Hawaii because of the uncertainty and delays caused by the current procurement process.

We respectfully suggest that the proposed amendment include not only construction contracts but also contracts for planning and design services be issued pursuant to federal procurement laws. We support the proposed bill with our proposed amendments to include planning and design services with construction contracts.

We appreciate the opportunity to express our support for H.B. 2544.

Thank you for the opportunity to testify.



AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

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February 3, 2016

**House Committee on Economic Development & Business
Hearing Date: Friday, February 5, 9:01 a.m., Conference Room 312**

Honorable Representatives Derek S. K. Kawakami, Chair; Sam Satoru Kong, Vice Chair; and Members of the House Committee on Economic Development & Business

Subject: **HB 2544, Relating to Construction Contracts
TESTIMONY IN OPPOSITION**

Dear Chair Kawakami, Vice Chair Satoru Kong, and Committee Members:

The American Council of Engineering Companies of Hawaii (ACECH) represents more than 70 member firms with over 1,500 employees throughout Hawaii. ACECH is a strong supporter of HRS §103D-304, the State's "qualification-based selection" (QBS) law, which follows the National model procurement code, for procurement of professional services.

ACECH believes that, in general, the State has a well-developed State Procurement Code and a well-administered State Procurement Office that provides good oversight of the code. Where it makes sense to do so, the State's Procurement Code already uses the best parts of the Federal Code. Related to our industry, we strongly favor the use of QBS for procurement of design professional services, as already provided for in HRS §103D-304, and the current language relative to procurement of design-build construction services. ACECH strongly opposes deletion of the provisions for procurement of design-build services as shown on pages 11-12 of the bill.

Therefore, ACECH respectfully requests this bill be deferred. We appreciate the opportunity to provide testimony on this matter. Please do not hesitate to contact us if you have any questions.

Respectfully submitted,
AMERICAN COUNCIL OF ENGINEERING COMPANIES OF HAWAII

Robin M. Lim, P.E.
President

PLUMBING & MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII



Via Email

February 4, 2016

TELEPHONE: (808) 597-1216
FAX: (808) 597-1409
1314 S. King Street, Suite 961
Honolulu, Hawaii 96814

GREGG S. SERIKAKU
EXECUTIVE DIRECTOR

Representative Derek S.K. Kawakami, Chair
Representative Sam Satoru Kong, Vice-Chair
Committee on Economic Development and Business
House of Representatives
The Twenty-Eighth Legislature, Regular Session of 2016

Chair Kawakami, Vice Chair Kong, and Members of the Committee:

LATE

SUBJECT: HB 2544 Relating to Construction Contracts

My name is Gregg Serikaku. I am the Executive Director of the Plumbing and Mechanical Contractors Association of Hawaii.

The Association for which I speak is **opposed** to HB2544.

Our Association questions the intent of replacing the current state procurement process for construction contracts with the federal procurement requirements. What specific issues does this bill intend to address? The federal procurement requirements are generally much more burdensome and require more documentation than what is currently required on State projects, and this will ultimately discourage small and mid-sized business from pursuing state work. In fact, many of our member contractors already choose not to bid on federal projects because of the amount of paperwork required.

The current state procurement procedures are well established and provide a competitive, fair, transparent and consistent method of procurement designed to protect public funds. Implementing a new set of guidelines for procurement agencies to follow will only serve to confuse both the agencies and bidders, cause significant delays, and ultimately will cost the state and counties to expend more resources for training personnel as well as for the resolution of newly created procurement issues.

We respectfully urge the committee to hold this bill.

Respectfully yours,

Gregg S. Serikaku
Executive Director

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcawhawaii.org
Website: www.gcawhawaii.org



GCA of Hawaii
GENERAL CONTRACTORS ASSOCIATION OF HAWAII
Quality People. Quality Projects.

Uploaded via Capitol Website

February 5, 2016

TO: HONORABLE DEREK KAWAKAMI, CHAIR, HONORABLE SAM KONG, VICE CHAIR, HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS

SUBJECT: **H.B. 2544, RELATING TO CONSTRUCTION CONTRACTS.**
Subjects the procurement of construction contracts to federal procurement laws.

HEARING

DATE: Friday, February 5, 2016
TIME: 9:01 a.m.
PLACE: Conference Room 312

LATE

Dear Chair Mercado Kim and Vice Chair Ihara and Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred seventy general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. 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 **supports the intent** of H.B. 2544, Relating to Construction Contracts, which would amend Chapters 103 and 103D, Hawaii Revised Statutes (HRS) to exclude construction projects by the state from the provisions of these chapters. The bill further provides that the bidding and award of capital improvement and renovation projects by the state shall comply with statutory procurement requirements of Title 42, United States Code, Section 6962, as amended and applicable provisions of Section 48, Code of Federal Regulations.

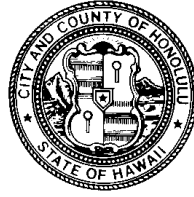
GCA supports the intent of H.B. 2544, as it attempts to simplify and consolidate the state's procurement procedures and standards for the bidding and award of construction and renovation projects with the federal standards and procedures. However, prior to the consideration of this measure, all of the applicable provisions of the federal statute must be examined to insure that they generally agree with the model procurement code upon which Hawaii's code is based. In addition, there may be certain sections of the code that may not be applicable in whole to Hawaii's construction situations and should not be adopted in total.

The GCA appreciates the consideration of this measure by this Committee, but it may be more effective to discuss the proposal and suggested amendments with all affected parties before consideration of the adoption of this measure.

Thank you for the opportunity to share our comments.

LATE

KIRK CALDWELL
MAYOR



NELSON H. KOYANAGI, JR.
DIRECTOR

GARY T. KUOKAWA
DEPUTY DIRECTOR

TESTIMONY OF NELSON H. KOYANAGI, JR.
DIRECTOR OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
BEFORE THE SENATE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS
February 5, 2016, Conference Room 312

House Bill No. 2544, "Relating to Construction Contracts"

Position: IN OPPOSITION

TO: The Honorable Rep. Derek S.K. Kawakami, Chair
and Members of the Committee on Economic Development & Business

The Department of Budget and Fiscal Services, City and County of Honolulu, **opposes** House Bill No. 2544, Relating to Construction Contracts.

Requiring construction contracts to comply with the federal procurement laws will be too complicated, difficult to implement and will be a huge administrative burden. The federal government also has no obligation to provide the City with the support and resources necessary to ensure compliance.

Any best practices observed by the Federal Government could be incorporated into the current Procurement Code after careful analysis. This would be preferable to a complete replacement.

Mahalo for the opportunity to testify on this bill. Should you have any questions or concerns, please feel free to contact the Department of Budget & Fiscal Services' Division of Purchasing at 808-768-5535 or bfspurchasing@honolulu.gov.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 04, 2016 7:53 PM
To: edbtestimony
Cc: jmas808@gmail.com
Subject: Submitted testimony for HB2544 on Feb 5, 2016 09:01AM

HB2544

Submitted on: 2/4/2016

Testimony for EDB on Feb 5, 2016 09:01AM in Conference Room 312

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|--|---------------------------|---------------------------|
| Jeffrey Masatsugu | Painters Labor Management Cooperation Trust Fund | Oppose | No |

Comments: The Painters Labor Management Cooperation Trust Fund strongly opposes this measure because it would take away all of the protections against bid shopping that subcontractors have under State law.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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HB2544

Submitted on: 2/4/2016

Testimony for EDB on Feb 5, 2016 09:01AM in Conference Room 312

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---|---------------------------|---------------------------|
| Jeffrey Masatsugu | Hawaii Glaziers, Architectural Metal Glassworkers Local Union 1889 AFL-CIO Stabilization Trust Fund | Oppose | No |

Comments: The Hawaii Glaziers, Architectural Metal Glassworkers Local Union 1889 AFL-CIO Stabilization Trust Fund strongly opposes this measure because it would take away all of the protections against bid shopping that subcontractors have under State law.

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HB2544

Submitted on: 2/4/2016

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| Submitted By | Organization | Testifier Position | Present at Hearing |
|-------------------|--|--------------------|--------------------|
| Jeffrey Masatsugu | Carpet, Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund | Oppose | No |

Comments: The Carpet, Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund strongly opposes this measure because it would take away all of the protections against bid shopping that subcontractors have under State law.

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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|--|---------------------------|---------------------------|
| Jeffrey Masatsugu | Hawaii Tapers Market Recovery Trust Fund | Oppose | No |

Comments: The Hawaii Tapers Market Recovery Fund strongly opposes this measure because it would take away all of the protections against bid shopping that subcontractors have under State law.

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