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TESTIMONY  
OF  
SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE  
ON  
GOVERNMENT OPERATIONS  
FEBRUARY 4, 2016; 1:15 PM

SB2501  
RELATING TO PROCUREMENT

Chair Kim, Vice-Chair Ihara and members of the committee, thank you for the opportunity to submit testimony on SB2501.

The SPO SUPPORTS the intent of past performance consideration when awarding contracts and submits additional comments in regards to this measure.

SPO submitted a full report to Legislature in January 2015 denoting the challenges to the past performance issue as well as a recommended set of phases for implementation (REF: REPORT ON THE STUDY ON PAST PERFORMANCE CONSIDERATION IN HAWAII CONTRACTING)

- a. In Phase I of SPO's recommendations for implementation of a past performance system, a responsibility determination be made on all procurements prior to the award of any contract and that contractor past performance be assessed as part of that responsibility determination. At first, in regards to competitive sealed bidding, this determination would be made on the basis of references and additional documentation that the proposer includes in their bid/proposal. It is SPO's belief that no matter what criteria you might choose to evaluate a bidder, ultimately, the bidder must be responsible in order to do business with the State.
- b. In respect of Competitive Sealed Bidding, the bill states that evaluation criteria should include: "bidder's past performance on projects of similar scope for public agencies, including delays, number of contract change orders, contract extensions, cost overruns, corrective actions, responses to notices of deficiencies, and assessments of the bidder's prior work."

It is critical to recognize that delays, number of contract change orders, contract extensions, cost overruns, and sometimes, even corrective actions may not be the fault of the contractor. Thus, it is imperative that the State create a record of past performance that is based on truth and fairness, and can be validated by formal documentation collected throughout the contract period that clearly shows the onus is on the contractor alone. In addition, it is also critical to develop this information as

to what positive areas the contractor has been able to achieve, i.e., ahead of schedule, in or under budget. The collection of past performance is to develop a record of responsible contractors and to encourage contractors to constantly be looking to improve performance.

Two major logistical challenges exist.

1. There is no past performance database that Procurement Officers can access. In our Past Performance Report, SPO recommends this as Phase II of the implementation process. We surmise a stand-alone State-wide past performance database could cost as much as \$4 million not including at least a 23% per year maintenance fee. Another option is to fund the \$2.5 million implementation of a robust eProcurement system that would be mandated for the Executive Branch, but also be available to any Agency across the State. This system would include the ability to collect information on contract performance, and give much needed transparency and consistency to the manner in which procurements are conducted. This is a self-funded model, and so no continuing maintenance fees would be required after initial implementation (REF: STATE PROCUREMENT OFFICE STRATEGIC PLAN, attached)
2. Second, there is no formal, available assessment of a bidder's prior work. Agencies and Departments typically assess a contractor's performance in varying ways, with differing policies, procedures and forms. Any assessment conducted may or may not be kept in the contract files. Certainly, these assessments are not readily available outside of the originator's division. Post-award contract management is an area where many States and Commercial companies struggle and a series of areas needs to be addressed such as training, consistency in forms and policy, and a database for collection. Here to, an eProcurement system would be most helpful as it would have the capability to search for construction contracts, and the visibility to see the contract information.

Based on the issues above, SPO recommends that the verbiage shown on Page 3, Section 3, Lines 9 through 13 exclude the additional breakdown language, and be revised to: "... and the bidder's past performance on projects of similar scope for public agencies."

Act 182 was passed at the last Legislative Session (2015) extending the Procurement Task Force to continue its work. It was tasked "specifically to examine and recommend past performance standards and statewide processes in order to promote economy, efficiency, effectiveness, and impartiality in procurement for state and county government." Those findings should be reviewed.

There are many areas of policy, procedure, infrastructure and logistical issues to be considered in implementing past performance. These can be addressed in Hawaii Administrative Rules. Resources will be required such as staffing to develop definitions, policies and procedures. This will entail meeting with stakeholders including, procurement personnel, vendors, departments and members of the community. Infrastructure must be created whereby each contracting unit may have access to enter and view performance data. There must also be a procedure for due process for vendors to respond to evaluations of their performance. Resources will also be needed for change management and training for personnel involved in procurement and contract administration as well as for vendors. For strong and robust implementation of Phase I, funds of at least \$130,000 would be required.

Thank you.

Attachment: SPO Initiatives

Links:

[Past Performance Report](http://spo.hawaii.gov/wp-content/uploads/2015/01/SPO-Past-Performance-Legislative-Report-submitted.pdf) (http://spo.hawaii.gov/wp-content/uploads/2015/01/SPO-Past-Performance-Legislative-Report-submitted.pdf)

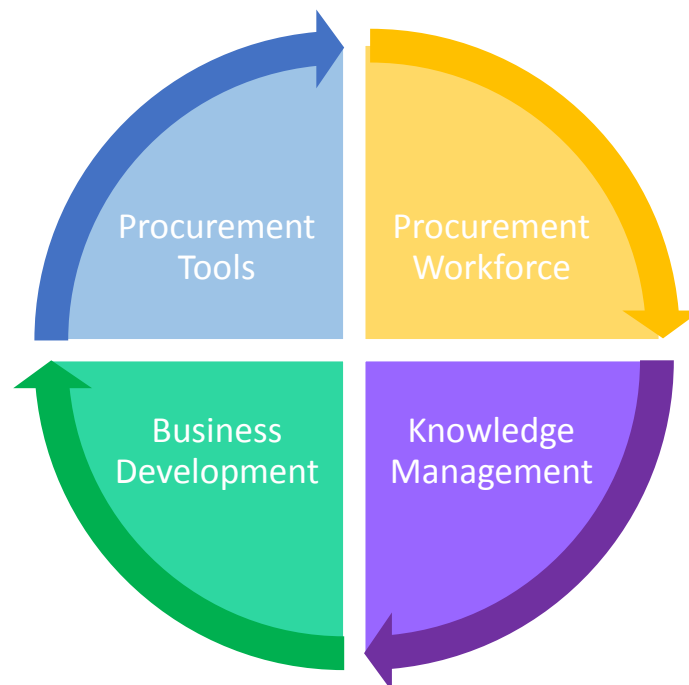
[Past Performance Report Appendices](http://spo.hawaii.gov/wp-content/uploads/2015/01/Appendices-for-Past-Performance-Report.pdf) (http://spo.hawaii.gov/wp-content/uploads/2015/01/Appendices-for-Past-Performance-Report.pdf)

The State Procurement Office (SPO) recognizes the need to improve Procurement across the State. There are four major areas, which if focused on, will greatly aid the success of procurements in cost savings, improved efficiencies and innovation.

What and how the state purchases has great impact on our economy. We need to make the most of what we have. For Hawaii to catch up we need training and development of our procurement workforce for all state agencies and departments. We also need to be an incubator of Acquisition innovation and leverage these cutting-edge ideas to enhance the overall business environment and economic growth of Hawaii.

The SPO recommends four areas of focus in this strategic initiative:

1. Procurement Tools
2. Procurement Workforce
3. Business Development
4. Knowledge Management



## 1. Procurement Tools

Consistency – Among the 19 Departments that fall under the Executive Branch CPO, there is very little consistency with the way procurement solicitations go out, and with what is expected from vendor proposals. The inconsistencies and incongruent processes increase procurement processing time per requirement, which increases time spent by State Buyers, reducing efficiency of procuring personnel, and increasing confusion and money spent by Vendors. The ability to create one set of templates and expectations for doing business with the Executive Branch will incentivize more businesses to want to do business with the State, enhance competition, and reduce the costs that vendors must consider with bid and proposal costs.

Transparency – There is currently very little transparency on the Executive Branch Procurement Spend. This lack of transparency leads to probable duplication of effort and redundancy in procurements, failure to leverage economies of scale, very little data for decision-making and ultimately, increased costs to the State Budget.

### SPO Initiative: eProcurement System

A robust online electronic procurement system for issuing solicitations, receiving responses, and issuing notices of award will improve the consistency and transparency of procurements conducted by the 19 Departments under the Executive Branch CPO. In addition, an eProcurement system would allow for establishment of state-wide catalogs, sourcing management and spend analysis. These areas would increase the level of transparency and give decision-makers the necessary business analytics to make well-informed, smart choices. Moreover, the State will achieve significant cost savings and tangible benefits including:

- Increased competition,
- Leveraged economies of scale,
- Improved cost and pricing methods,
- Improved negotiation standing,
- Decreased processes and leveraged learning curve and specialization,
- Reduced turnover time to award, and
- Reduced interest payments to vendors for late payments.

#### Measurements for Success:

- Estimated cost savings by agencies utilizing SPO statewide contracts
- Estimated cost savings of Electronic Procurement System awards
- Number of Electronic Procurement System solicitations
- Number of registered vendors
- Total reduction in procurement Lead Time

## 2. Procurement Workforce: The Hawaii Certified Procurement Professional (HCPP)

Proficiency – There is little to no strategic organization to ‘who’ is delegated to perform procurements and how procurement expertise is attained, developed and leveraged. Many State Departments and Agencies have hundreds of non-procurement personnel conducting procurements on all levels of complexity.

The Procurement Specialist and Procurement Officer skills, expertise and abilities must be increased to a level of professionalism due the career field. Procurement Professionals have expertise in business, accounting, finance, legal issues, negotiating, marketing, customer service and cross-functional team management, and this is the State’s Body of Business Advisors on strategic and tactical levels of procurement.

To decrease procurement problems and increase compliance and assure smooth and successful procurements to take place, the Procurement Workforce level of knowledge must be raised. The Procurement Workforce must be recognized across the State as professionals in their field.

Compliance – A large area of procurement problems fall under compliance. Without a skilled, focused workforce, and few controls, there is a push to find a work-around the procurement code versus working within that code. Ethics and procurement integrity must be considered by Leadership as a vital part of the procurement process in order for the workforce to understand its importance.

### SPO Initiative: Procurement Training & Certification Learning Management System

A statewide procurement training and certification learning management system (LMS) is a vital tool to ensuring the State of Hawaii develops a proficient workforce of procurement professionals who expend public funds in a manner that is compliant with applicable statutes, rules, and policies.

“Certification is the process by which an individual demonstrates meeting specific qualifications (eligibility requirements) and an established level of knowledge (examination) necessary to competently perform a specific job. UPPCC Certifications reflect established standards and competencies for those engaged in government procurement, and attest to the designee's ability to obtain maximum value for the taxpayer's dollar.”<sup>1</sup>

The SPO will develop a Hawaii State Procurement Certification process that will guide the career field within the State, to allow for certified levels of trained journeymen and experts.

The LMS will allow state and county procurement personnel to register online, take relevant procurement courses on-demand, and receive certification by passing quizzes. The LMS will further improve SPO’s training program by:

- Offering a centralized source of learning,
- Automating data-keeping and reporting procedures,
- Bolstering knowledge retention with evaluation capabilities, and
- Simplifying the learning process.

Measurements for Success:

- Number of users registered in the LMS
- Number of certifications issued by the LMS
- Percentage of evaluations with meaningful and practical ratings by attendees of procurement training workshops

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<sup>1</sup> Universal Public Procurement Certification Council (UPPCC.org), 8/31/15

### 3. Business Development: Procurement Visibility

- a. Economic Sustainability – The State of Hawaii supports the economic growth and sustainability of small business. Included in that focus is the need to improve the ease of doing business with the State. Many factors effect this metric, one of which is promotion of a State Small Business Program. This program would nurture emerging Hawaii industries, increase competition by broadening the local contractor base, enhance the ability of local small businesses, and increase local worker employment opportunities.

#### SPO Initiative: Promote the development & implementation of this Program

The SPO supports the creation of an independent/autonomous Hawaii Small Business Office (HSBO), which is comprised of subject matter experts who can guide the CPOs and small business owners through policy and guidance to support this set-aside program. The HSBO must be an independent office, to ensure no conflict of interest or agency influence or control over their mission. These small business experts will be integral in working with the community to develop rules for State implementation.

Measurements for Success:

- Number of increase in vendor registrations of small business owners
- Achieving at least 5% capture of state contracts per fiscal year accumulating as the program grows to achieve the mandated 20% goal (as a prime or sub-contractor)

- b. Accessibility – Currently, there are over 40 sites that vendors have to visit daily in order to determine what solicitations are available to their doing business in Hawaii. This creates confusion for vendors on where to look for work and confusion for State Buyers on where to post. This lack of accessibility reduces the State’s outreach to the market, which reduces our reach to competition. Smaller competition or complete lack thereof, creates increased overall costs of State procurements.

#### SPO Initiative: Procurement One-Stop-Shop

In order to enable business growth and economic development in Hawaii, a One-Stop-Shop site should be developed. Unlike the eProcurement system (which is limited to the 19 Executive Departments that fall under the Executive Branch CPO), the One-Stop-Shop site will pull all solicitation and notice information from across the 21 CPO jurisdictions including UH, DOE, the Legislative and Judiciary Branches, the Counties, and the 19 Executive Departments) to one page that can be accessed by all interested vendors. Not only will this create a more responsive vendor market, but it will also give the State meaningful business analytics on the state of procurement across Hawaii.

Measurements for Success:

- Number of increase in published solicitations
- Ease of doing business with the State – vendor survey before and yearly thereafter
- Number of increase in vendor registrations
- Number of hits on site

#### **4. Knowledge Management: Procurement Wizard**

Procurement in Hawaii has been deeply affected by two factors in the last five to ten years: loss of existing knowledgebase and increasingly complex changes in procurement. Temporary cuts in benefits, inability to hire new staff and the high volume of retiring Baby Boomers, have led to a huge loss in the knowledgebase. This loss has been exacerbated by lack of experience opportunities for newer personnel.

The field of Procurement has undergone considerable change in the last few years. This is attributable to a number of factors including the necessity to research and implement strategies to realize cost savings due to an austere economy and advances in the use of technology and ability to collect and analyze data. Even the manner in which procurement is perceived has changed. It has become a high level strategic function rather than a lower level process function.

##### SPO Initiative: Procurement Wizard

An online, digital procurement manual, based around the Procurement Lifecycle acting as a Wizard to bring best practices, learning lessons, templates, samples, guidance, training and regulations to one multi-faceted library. Accessible to both the State Procurement Workforce and the Community, this initiative will become the foundation of the State's Knowledge Management program for procurement.

Measurements for Success:

- Number of hits on site
- Customer Service survey before and yearly thereafter
- Number of increase in vendor registrations

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

Uploaded via Capitol Website

February 4, 2016

TO: HONORABLE DONNA MERCADO KIM, CHAIR, HONORABLE LES IHARA, VICE CHAIR, SENATE COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **COMMENTS TO S.B. 2501, HD1 RELATING TO PROCUREMENT.**  
Requires past performance to be factored into future bid selection of a contractor. Defines past performance. Requires past performance to be considered in sole source procurement. Appropriates funds. Takes effect on 1/1/2017.

HEARING

DATE: Thursday, February 4, 2016  
TIME: 1:15 p.m.  
PLACE: Capitol Room 414

Dear Chair Mercado Kim, Vice Chair Ihara and Members of the Committee,

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. The 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.

S.B. 2501, Relating to Procurement proposes to require that past performance of a contractor be factored into future low bid selection and for sole source procurement. **GCA's comments are limited to how this measure relates to construction contracts only as it appears the areas of concern in construction include: (1) being on budget; (2) being on time; and (3) the delivery of good quality work.**

**2013-2015 History of Past Performance Discussions and Task Forces**

From 2013 through part of 2015 the Procurement Task Force was initiated pursuant to [Senate Concurrent Resolution 92 \(2013\)](#) which has been meeting since 2013 through the early part of 2015, and one of the issues discussed included how to address bad performing contractors. Additionally, in 2014 this body passed [House Concurrent Resolution 176 \(2014\)](#), which required a study of past performance of government contractors. These Task Forces together with participating government agencies and private industry stakeholders agreed that this issue needs further discussion before dictating an approach with potential unintended consequences. Last year, pursuant to [Act 182 \(2015\)](#) this body extended the Procurement Task Force to specifically identify and propose amendments, if any, to the procurement code that may better promote economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects, specifically regarding statewide past performance standards and procedures. Unfortunately, the Act 182 (2015) Task Force did not meet during the interim to address these issues.



It is important to note that consideration of past performance in procurement is already permitted under 103D-302(f) under the invitation for bid process, what is commonly known as low bid, however for various reasons agencies choose not to use it. Under Section 103D-302(f), HRS an invitation for bid may set the requirements to determine qualifications and criteria for a project. In other words, the agency may set the criteria and qualifications for the bidder in its bid specifications, which could include such criteria as past performance, recent project history and any other qualifications an agency may find necessary. The reason for this reluctance on the part of the state agencies to use this section may be due to difficulty to quantify, evaluate, and administer past performance.

**The consideration of past performance for low bid contracts raises a number of concerns for GCA, including but not limited to: ensuring objective administration and evaluation processes for agencies in determining qualified past performance criteria; inability for a new contractor to bid public work due to lack of past performance qualifications; agency's lack of resources, including staff and funding for implementation and administration of past performance for low bid contracts; procedural due process concerns and appeal procedures; and ensuring efficiency, integrity and transparency in the procurement process of public works construction projects.** In construction, a number of evaluation factors must be taken into consideration, including licensing, subcontractor performance, less than stellar designs, unforeseen conditions, inclement weather, inadequate administration and oversight, untimely and disruptive owner requested change orders, unforeseen hazardous condition discoveries, the need to accommodate user activities that limit noise (such as exam week) or odorous, sometimes toxic activities, that may be reasons why the project does not come in satisfying the 3 noted criteria: (1) On budget; (2) On time; and (3) numerous changes to the original design.

Therefore, GCA believes this bill is premature as state and county agencies along with stakeholders have made initial steps in addressing possible solutions, thus may be able to provide better guidance in addressing how past performance can be used to evaluate contractors. **Instead, the better option is to provide the Task Force another opportunity to identify what the best approach would be to factor in past performance in a fair and objective assessment of a contractor's performance.**

Thank you for considering our comments on this measure.



ELECTRICAL CONTRACTOR'S ASSOCIATION OF HAWAII

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February 3, 2016

To: Senate Committee on Government Operations  
The Honorable Senator Donna Kim, Chairperson

From: Al Itamoto, Executive Director  
Electrical Contractors Association of Hawaii  
National Electrical Contractors Association, Hawaii Chapter

Subject: SB 2501 Relating to Procurement

Notice of Hearing

Date: Thursday, February 4, 2016  
Time: 1:15 PM  
Place: Conference Room 414  
State Capitol  
415 South Beretania Street

Dear Chairs Kim, Ihara and Committee members:

The Electrical Contractors Association of Hawaii (ECAH) is a non-profit association consisting of electrical contractors doing business in the State of Hawaii. ECAH is the Hawaii Chapter of the National Electrical Contractors Association (NECA). While we agree to the concept of using past performance as a criteria in awarding bids, this bill is not clear on the process and procedure and is open to too much subjectivity for us to support at this time until more details are made available. In addition, the past performance standards should apply to all subcontractors listed by the offeror.

At this time, ECAH reserves final opinion on the intent and purpose of SB 2501 relating to past performance.

Thank you for the opportunity to provide testimony on this issue.

# ***SAH - Subcontractors Association of Hawaii***

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February 4, 2016

Testimony To: Senate Committee on Government Operations  
Senator Donna Mercado Kim, Chair

Presented By: Tim Lyons, President

Subject: S.B. 2501 - RELATING TO PROCUREMENT

Chair Mercado Kim and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. 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

The concept that this bill puts forward is overdue. The mechanics of how it will be done are less clear to us so we reserve judgement on this bill. There is no doubt that those contractors that do not have a good past performance should not be entitled to receive additional contracts potentially costing the state and the counties more money for remedial work and/or liability exposure for faulty work.

Our concern however, is based on how one judges these items. As is noted in the bill, the kinds of things that past performance will be judged on are delays, number of contract change orders, extensions, overruns and corrective actions. The problem is the subjective judgment that will be required in order to determine why was there a delay? Was it a supplier/manufacturer that could not deliver materials on time to the contractor who then caused a delay in the project? Was the change order a result of architectural deficiencies; not the fault of the contractor or, was the contract extension because of these items? Additionally, while it is important to know if there was a cost overrun, it is more important to why there was a cost overrun and how to judge who is at fault.

In summary, we are not opposed to the usage of past performance however, this Committee may remember the creation of the PIP Program under a past Administration which caused an uproar in the construction industry because it was seen as so subjective that contractors felt they were being denied an opportunity to participate while others were being favored. Its centerpiece was past performance. We would like not to see a repeat of that fiasco.

Based on the above then, we are not opposed to the concept offered in this bill, however we would like to reserve judgement until we can see additional details.

Thank you.

## AMERICAN INSTITUTE OF ARCHITECTS

February 4, 2016

Honorable Donna Mercado Kim, Chair  
Senate Committee on Government Operations

Subject: **Senate Bill 2501**  
**Relating to Procurement**

Dear Senator Kim and Members of the Committee,

My name is Daniel Chun, Fellow of the American Institute of Architects, practicing local architect for 40 years and President of the American Institute of Architects Hawaii State Council. In 2002 I was personally and deeply involved in drafting the current section 103D-304. It took AIA and our allies about three years to vet and pass the current language.

AIA is **OPPOSED** to Senate Bill 2501 that amends Section 103-304 for professional services including architectural services on technical grounds. The language of Page 4 lines 18-19 would add "assessments of prior work" to the second-ranked selection criteria. Discussion:

- The second ranked selection criteria already reads "Past performance on projects of similar scope" already covering the intent of SB 2501.
- In measuring architect service performance the added phrase "assessment of prior work" is technically and procedurally incorrect because "work" is tangible completed buildings; a criterion measured in the first-ranked selection criteria.

Many public agencies use selection criteria as the "opening sentence" to paragraphs further detailing specific needs. Our intent when drafting the original statute was to leave flexibility for agencies to do this. HRS 103D-304 is one of the shortest sections of procurement code, with few added words in its administrative rules.

In the recent Asato vs. Procurement Policy Board case the Court said the current statute ably anticipates the needs of public agencies. If architect performance seems unsatisfactory, more agency staff training in selection process and contract management is the answer; not a change in this section.

AIA understanding is that there are very few protests in this procurement section; meaning the statute is already well written. AIA requests that you delete the proposed language as unnecessarily redundant. Thank you for this opportunity to **OPPOSE** the language of **Page 4 lines 18-19**.





AMERICAN COUNCIL OF ENGINEERING COMPANIES  
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February 3, 2016

**Senate Committee on Government Operations**

**Hearing Date: Thursday, February 4, 1:15 p.m., Conference Room 414**

Honorable Senators Donna Mercado Kim, Chair; Les Ihara, Vice Chair; and Members of the Senate Committee on Government Operations

Subject: **SB 2501, Relating to Procurement  
Testimony with Comments**

Dear Kim, Vice Chair Ihara, 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.

While we appreciate the intent of the bill to include past performance as a factor in procurement selection, there is no need to revise the language of HRS §103D-304 as proposed by Section 5 of the bill, because that statute already contains "past performance on projects of similar scope" as a selection criteria. The existing language of HRS §103D-304 mirrors the revisions proposed for HRS §103D-303 under Section 4 of the bill. We do not see the necessity of making revisions to HRS §103D-304 to achieve the intent of this bill.

**Therefore, we strongly recommend that Section 5 of the bill be removed in its entirety.**

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

Janice C Marsters, PhD  
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