



STATE OF HAWAII
STATE PROCUREMENT OFFICE

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 586-0554
email: state.procurement.office@hawaii.gov
<http://spo.hawaii.gov>

TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEES ON
GOVERNMENT REFORM
AND
ECONOMIC DEVELOPMENT
FEBRUARY 5, 2021, 11:00 A.M.

HOUSE BILL 582
RELATING TO PREFERENCES UNDER THE PROCUREMENT CODE

Chairs McKelvey and Quinlan, Vice-Chairs Wildberger and Holt, and members of the joint committees, thank you for the opportunity to submit testimony on HB582. The State Procurement Office (SPO) provides the following with comments.

Public procurement's primary objective is to provide everyone equal opportunity to compete for government contracts and to prevent favoritism, collusion, or fraud in awarding contracts. Pursuant to Section 103D-101, Hawaii Revised Statutes (HRS), economic competition is encouraged by ensuring that all persons are afforded an equal opportunity to compete in a fair and open environment.

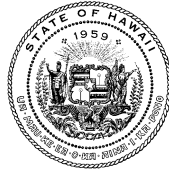
Chapter 103D, HRS, the Hawaii Public Procurement Code, is the single source of public procurement policy to be applied equally and uniformly, a contracting process vital to good government. The National Association of State Procurement Officials (NASPO) published a white paper on In-state Preferences, which is found at

<https://www.naspo.org/wp-content/uploads/2019/12/1.pdf>

According to the white paper, the cost of goods or services is increased for all taxpayers when a percentage differential is allowed, "... meaning that the state will not get the same value for the dollars spent. This increases the percentage of the entity's budget spent on procurement.

When a percentage preference is allowed, businesses and services may choose to withhold a bid or proposal if they do not gain from participating in the procurement process. This results in a smaller market, which leads to an increase in prices due to lack of competition.

Thank you.



STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

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

WRITTEN TESTIMONY
OF
CURT T. OTAGURO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
COMMITTEE ON GOVERNMENT REFORM
AND THE
COMMITTEE ON ECONOMIC DEVELOPMENT

FRIDAY, FEBRUARY 5, 2021, 11:00 A.M.
CONFERENCE ROOM 309, STATE CAPITOL

H.B. 582

RELATING TO PREFERENCES UNDER THE PROCUREMENT CODE

Chairs McKelvey and Quinlan, Vice Chairs Wildberger and Holt, and members of the Committees, thank you for the opportunity to submit testimony on H.B. 582.

The Department of Accounting and General Services (DAGS) opposes H.B. 582 for the following reasons:

- Preference, in general, has had negative impacts on procurement when applied to procurement methods and processes. Such negative impacts include:
 - Interpretation of how the preference is to be applied is often not consistent and, therefore, may be unintentionally applied unfairly across procuring agencies.
 - Additional time and resources are needed to evaluate offeror's/bidder's applications for the preference to determine if they qualify for the preference.

- Preference becomes a potential source for protest of an award when competing offerors/bidders challenge each other's qualifications for the preference that resulted in the award.
- Lengthening the time to award a contract due to the additional time needed to evaluate whether the offerors qualify for the preference and due to the increased potential for further delays when a protest is filed on the offer/bid and/or award.
- Increased costs due to project delays. The longer the delay in project award, the greater the risk that the awarded offeror/bidder cannot hold their bid price. If the time exceeds the specified window for holding bid prices in the solicitation for making an award, the apparent low offeror/bidder may withdraw its offer/bid without penalty. The department or agency would then have to consider award to the next lowest responsible/responsive bidder, who also no longer has to hold their bid price. Depending on the budget or time constraints on the project, alternative means for procurement may need to be considered, which further delays project implementation.
- Preferences potentially increase the project cost. The specified percentage preference may cause a project to go over the project budget and either kill a project or cause an agency to have to identify additional funds that could have been used to fund other projects. This particular bill allows up to a 25% preference, which is a substantial amount. Here are some examples:
 - Say the apparent low bidder's offer is \$1.0 million and they did not apply or qualify for the maximum 25% preference. The second low bidder's offer is \$1,240,000, and they qualified for a 25% preference. The second

low bidder will now become the low bidder when the application of the preference reduces their offer to \$930,000 for evaluation purposes. Note that the actual award amount will still be \$1,240,000, which will cost the state \$240,000 more than if award were made to the original apparent low bidder.

- Say the apparent low bidder's offer is \$200 million, and they did not apply or qualify for the preference. The second low bidder's offer is \$209.5 million, and they qualified for just a 5% preference. The second low bidder will now become the low bidder whose price is reduced for evaluation purposes to \$199,025,000. The award amount will still be \$209.5 million, which will cost the state \$9.5 million more.

For this bill in particular:

- While this bill tries to define "individuals with disabilities" and how it will be determined, it is still not clear. Can a bidder claim any individuals that are working on the project, including home office employees, in the percentage, or is it just intended for labor in the construction trades? Is it the intention not to count the employees of subcontractors and other vendors contracted by the bidder? As written, this only applies to the bidder's employees.
- How will the bidders' claims be verified? If awarded, how will it be verified that the bidder actually did employ individuals with disabilities for the hours it claimed to get the preference and the project award? Are there repercussions if the bidder does not employ the individuals with disabilities for the project as they

said they would? What happens if a bidder just employs individuals with disabilities for work not even necessary for the project at minimum wage to qualify for the preference and create a bid advantage (for remedial work, for example)? How will this benefit the individuals the bill intended to support?

While we support the intent to provide opportunities for individuals with disabilities, the procurement code should not be used as the means to provide these opportunities or encourage businesses to hire individuals with disabilities. Other means should be considered. Perhaps tax deductions or other reliefs should be explored.

Thank you for this opportunity to provide testimony on this matter.

DAVID Y. IGE
GOVERNOR OF HAWAII



ELIZABETH A. CHAR, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
PRINCESS VICTORIA KAMĀMALU BUILDING
1010 RICHARDS STREET, Room 122
HONOLULU, HAWAII 96813
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543

February 4, 2021

The Honorable Representative Angus L.K. McKelvey, Chair
House Committee on Government Reform
The Honorable Representative Sean Quinlan, Chair
House Committee on Economic Development
The Thirty-First Legislature
State Capitol
State of Hawai'i
Honolulu, HI 96813

Dear Representative McKelvey, Representative Quinlan, and Members of the Committee:

SUBJECT: HB582 Relating to Preferences Under the Procurement Code

The Hawaii State Council on Developmental Disabilities **SUPPORTS HB582** to establish a preference under the procurement code for employers who pledge to hire individuals with disabilities when contracting for goods, services, or construction through competitive sealed bidding, competitive sealed proposals, or both.

Hawaii is within the bottom percentile of states in regards to employing individuals with intellectual and developmental disabilities (I/DD). This measure would help support the efforts of our local community in employing individuals within the I/DD community. This practice would bolster other employment supports such as customized employment and supported employment for those with disabilities. The creation of a ready to work pool of individuals could help to incentivize and streamline the process of finding a job for individuals with disabilities.

Thank you for the opportunity to submit testimony **supporting HB582**.

Sincerely,

A handwritten signature in blue ink that reads "Daintry Bartoldus".

Daintry Bartoldus
Executive Administrator