

STAND. COM. REP. NO.

251

Honolulu, Hawaii

FEB 12 , 2021

RE: H.B. No. 1355
H.D. 1

Honorable Scott K. Saiki
Speaker, House of Representatives
Thirty-First State Legislature
Regular Session of 2021
State of Hawaii

Sir:

Your Committee on Government Reform, to which was referred
H.B. No. 1355 entitled:

"A BILL FOR AN ACT RELATING TO STATE PROCUREMENT REFORM,"

begs leave to report as follows:

The purpose of this measure is to require:

- (1) Procurement officers to document whether to pursue a design professional for damages in the event of construction cost overruns;
- (2) The Chief Procurement Officer to:
 - (A) Compile a public list of construction companies or design professionals that are in noncompliance with the Procurement Code or have outstanding fines or penalties incurred in violation of the Procurement Code; and
 - (B) Adopt or amend rules to allow state procurement officers to request that cost or pricing data be certified upon initial bid submission and not after the conclusion of contract negotiations;

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- (3) The State Procurement Office to include training on the duty of procurement officers to hold design professionals liable for breaches of professional standards; and
- (4) The Legislative Reference Bureau to conduct a study on the laws and regulations relating to construction management policies and procedures applicable to the Procurement Code.

Your Committee received testimony in opposition to this measure from Hart Crowser, Inc.; Yogi Kwong Engineers, LLC; American Council of Engineering Companies of Hawaii; Okahara and Associates, Inc.; CONSOR Engineers, LLC; ParEn Inc. dba Park Engineering; Gray Hong Nojima & Associates, Inc.; and Fukunaga & Associates, Inc. Your Committee received comments on this measure from the Department of Accounting and General Services, State Procurement Office, and Legislative Reference Bureau.

Your Committee finds that this measure will help in preventing cost overruns for state projects and ensure compliance with the Procurement Code by construction companies and design professionals.

Your Committee has amended this measure by:

- (1) Applying the liability determination for cost overruns provision to contractors;
- (2) Specifying that noncompliant construction companies and design professionals are to remain on the list available on the State Procurement Office's website for five years;
- (3) Inserting language providing that construction cost overruns shall constitute a tort for purposes of the review and findings on the issues of liability and damages in tort claims against design professionals by the Design Claim Conciliation Panel;
- (4) Requiring bids for a contract under the competitive sealed bidding process to include a liability contingency fund of an unspecified percent of the project cost to avoid cost overruns;



- (5) Clarifying the definition of "construction defect" under the Contractor Repair Act, to include construction cost overruns;
- (6) Establishing the Procurement Professional Standards Task Force within the Department of Accounting and General Services to develop professional standards for non-state parties involved in the procurement process and requiring the task force to report to the Legislature prior to the Regular Session of 2022;
- (7) Deleting language that would have required the Legislative Reference Bureau to conduct a study relating to Procurement Code construction management policies and procedures and report to the Legislature;
- (8) Changing its effective date to July 1, 2112, to encourage further discussion; and
- (9) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

Your Committee recognizes the numerous concerns raised by testifiers regarding this measure. Your Committee has taken those concerns into consideration and has amended this measure based on a preliminary consensus from the stakeholders. Your Committee in particular wishes to note the concerns raised by the Legislative Reference Bureau (Bureau) about the Bureau's lack of expertise in the fields of public procurement enforcement, design professionals, or contract management. Your Committee believes that a working group co-chaired by the Comptroller and Chief Procurement Officer and consisting of five additional members invited by the Comptroller, as contained in this amended measure, will be better suited to address concerns relating to professional standards for non-state parties involved in the procurement process.

As affirmed by the record of votes of the members of your Committee on Government Reform that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1355, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1355, H.D. 1, and be referred to your Committee on Consumer Protection & Commerce.



Respectfully submitted on
behalf of the members of the
Committee on Government Reform,



ANGUS L.K. McKELVEY, Chair



