

Honolulu, Hawaii
FEB 10, 2022

RE: H.B. No. 2492
H.D. 1

Honorable Scott K. Saiki
Speaker, House of Representatives
Thirty-First State Legislature
Regular Session of 2022
State of Hawaii

Sir:

Your Committee on Government Reform, to which was referred
H.B. No. 2492 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 damages against a design professional or contractor 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 for violations 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;



- (3) Make cost overruns a construction defect for the purposes of the Contractor Repair Act;
- (4) Require the State Procurement Office to include training on the duty of procurement officers to hold design professionals liable for breaches of professional standards;
- (5) Require bids for a contract under the competitive sealed bidding process to include a liability contingency fund; and
- (6) Establish the Procurement Professional Standards Task Force to develop professional standards for non-state parties involved in the procurement process.

Your Committee received testimony in opposition to this measure from the American Council of Engineering Companies of Hawaii; CONSOR Engineers, LLC; American Institute of Architects, Hawaii State Council; General Contractors Association of Hawaii; and two individuals. Your Committee received comments on this measure from the Department of Transportation and State Procurement Office.

Your Committee finds that this measure is intended to help prevent cost overruns for state projects and ensure compliance with the Hawaii Public Procurement Code by construction companies and professionals. Your Committee notes that this measure is meant to encompass all professional service contracts and is not meant to single out design professionals or any other professionals.

Your Committee has amended this measure by:

- (1) Deleting language requiring the State Procurement Officer to compile a public list of noncompliant construction companies and design professionals;
- (2) Deleting language requiring bids for a contract under the competitive sealed bidding process to include a liability contingency fund;
- (3) Requiring the State Procurement Office to conduct a study to gather data on the appropriateness of requiring



bids for a contract with the State to include a liability contingency fund to avoid cost overruns, including the appropriate percent of the project cost to be deposited into the project's liability contingency fund, and report to the Legislature prior to the Regular Session of 2023;

- (4) Appropriating an unspecified amount of funds to the State Procurement Office for research and development of training manuals, a design training workshop, two full-time equivalent trainer positions, and the Procurement Professional Standards Task Force;
- (5) Changing its effective date to July 1, 2112, to encourage further discussion; and
- (6) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

Should your Committee on Finance choose to deliberate on this measure further, your Committee respectfully requests that it consider appropriating \$944,000 to the State Procurement Office as follows:

- (1) \$800,000 for research and development of training manuals and a design training workshop;
- (2) \$84,000 a year and \$60,000 a year for two full-time equivalent (2.00 FTE) positions; and
- (3) Any additional funds needed to assist the Procurement Professional Standards Task Force.

Your Committee further respectfully requests your Committee on Finance to examine the \$944,000 appropriation amount to the State Procurement Office, as it seems to be quite large of an appropriation to simply carry out research and development of training manuals and conduct a design training workshop.

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. 2492, as amended herein, and recommends that it pass Second



Reading in the form attached hereto as H.B. No. 2492, 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



