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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
LABOR & GOVERNMENT OPERATIONS
February 6, 2024, 9:15 A.M.

HOUSE BILL 2499
RELATING TO PROCUREMENT FOR THE UNIVERSITY OF HAWAII

Chair Matayoshi, Vice Chair Garrett, and members of the committee, thank you for the opportunity to submit testimony on House Bill 2499. The State Procurement Office (SPO) supports this bill to remove the repeal and reenactment in Act 8, Special Session Laws of Hawaii 2021, to maintain the authority of the President of the University of Hawaii (UH) to act as the UH's Chief Procurement Officer (CPO) for procurement contracts under Chapter 103D, Hawaii Revised Statutes (HRS).

Act 87, SLH 2013 (HB 114) "Relating to Higher Education" was signed into law on May 31, 2013. By enacting Act 87, the Legislature amended HRS §103D-203 and §304A-2672 by repealing the authority of the President of the UH to serve as the CPO for construction contracts and professional services, furnished by licensees under chapter 464 (i.e., Engineers, Architects, Surveyors, and Landscape Architects), related to construction contracts and assigned those responsibilities to the Administrator of the SPO.

To implement the requirements of this Act, the SPO issued UH Procurement Delegation No. 2013-01 delegating procurement authority to the UH President, as well as a Memorandum of Agreement (MOA) delineating SPO's oversight responsibilities and UH's responsibilities and procedures. The SPO also imposed a high-level oversight role in order to evaluate the UH's construction procurement practices by collecting and reviewing data related to the UH's construction procurements for FYs 14 and 15, in order to provide fact-based report to the Legislature by January 2016.

The SPO's report documented the extensive oversight, reviews, cooperation, and coordination between the SPO and the UH on procurements for construction and construction-related professional services. As documented in the report, between July 1, 2013, to June 30, 2015, the SPO reviewed 102 University solicitations for construction out of 373 construction procurements conducted by UH during that time. The reviews included solicitations for competitive sealed bids, professional services, and small purchases. The SPO also provided

oversight of post-award procurement activities by conducting eleven (11) construction site visits and three (3) desktop reviews of on-going projects.

Based on the SPO's review of 102 UH construction procurements, UH's Administrative Procedures, and 14 post-award site visits, the SPO found that the UH is conducting construction procurements in a compliant, efficient, and transparent manner. As such, based on the SPO's findings and recommendations, the SPO supports maintain the authority of the UH President's authority to act as the Chief Procurement Officer for all the UH's procurements, including the procurement of construction and construction-related professional services.

Thank you.



‘ŌNAEHANA KULANUI O HAWAI‘I

Legislative Testimony

Hō'ike Mana'o I Mua O Ka 'Aha'ōlelo

Testimony Presented Before the
House Committee on Labor & Government Operations
February 6, 2024 at 9:15 a.m.

By
Jan Gouveia
Vice President for Administration
University of Hawai'i System

HB 2499 – RELATING TO PROCUREMENT FOR THE UNIVERSITY OF HAWAII

Chair Matayoshi, Vice Chair Garrett, and Members of the Committee:

Thank you for the opportunity to submit testimony on HB 2499 – Relating to Procurement for the University of Hawai'i, which amends Act 8, Special Session Laws of Hawai'i (SSLH) 2021, which extended the sunset provision expiration to June 30, 2024. The University of Hawai'i (University) is in support of this measure, which will permanently reinstate the President as the Chief Procurement Officer for contracts for construction and construction-related professional services.

In 2021, Act 8, SSLH 2021, became law and reinstated the authority of the President as the Chief Procurement Officer for contracts for construction and construction-related professional services and provided a sunset expiration date of June 30, 2024.

In 2018, Act 42, Session Laws of Hawai'i (SLH) 2018, was signed into law that, among other things, amended Hawai'i Revised Statutes (HRS) §§103D-203 and 304A-2672 to reinstate the authority of the President as the Chief Procurement Officer for construction-related procurements and provided a sunset date of June 30, 2021 for the repeal of the act and reenactment of HRS §§103D-203 and 304A-2672 as amended in 2013 by Act 87, SLH 2013.

Act 87, SLH 2013, among other things, amended HRS §§103D-203 and 304A-2672 to:

- Require the Administrator of the State Procurement Office (SPO), rather than the University of Hawai'i President, to serve as the Chief Procurement Officer for construction-related procurements;
- Require all procurements for professional services furnished by licensees under chapter 464 (i.e. Engineers, Architects, Surveyors, and Landscape Architects) for construction projects to be “coordinated” with the Department of Accounting and General Services (DAGS); and

- Require SPO to submit a report to the legislature, no later than twenty days prior to the convening of the regular session of 2016, of the Administrator's findings and recommendations, including any proposed legislation, relating to the transparency, efficiency, and compliance of the University of Hawai'i's procurement of construction contracts and construction-related consultant services pursuant to chapter 103D, HRS.

Currently and prior to 2013, the President has been afforded the duties, powers and authority of a Chief Procurement Officer – similar to the Administrative Director of the Courts for the Judiciary, President of the Senate, Speaker of the House of Representatives, Chairperson of the Board of the Office of Hawaiian Affairs, Superintendent of the Department of Education, CEO of Hawai'i Health Systems Corporation, the Administrator of the State Procurement Office, the respective finance directors of the counties, the respective chairpersons of the councils of the counties, the managers and chief engineers of the respective county boards of department water supply, and director of the semi-autonomous public transit agency.

The Chief Procurement Officer plays an integral role in the day-to-day transactions of all procurements under chapter 103D, HRS – which is an already complicated and time-consuming effort. It became further complicated and time consuming when this role was transferred to the Administrator for SPO, along with the additional requirement of coordinating with DAGS. Fortunately, the Administrator for SPO and the Public Works Director for DAGS handled the situation with professionalism and sensitivity to their impact on UH's CIP program, and all parties agreed to some basic parameters and a process for all construction-related procurements.

In accordance with the Act, the SPO Administrator submitted a report to the 2016 Legislature entitled, "State Procurement Office Findings and Recommendations Relating to the University of Hawai'i's Procurement of Construction Contracts and Construction-Related Consultant Services Pursuant to Chapter 103D Hawai'i Revised Statutes as Required by Act 87, SLH 2013, 'Relating to Higher Education.'"

The report documents the extensive oversight, reviews, cooperation and coordination between the University and the SPO on procurements for construction and construction-related professional services. As documented in the report, between July 1, 2013 to June 30, 2015, the SPO reviewed 102 University solicitations for construction out of 373 construction procurements conducted by UH during that time. The reviews included solicitations for competitive sealed bids, professional services, and small purchases. The SPO also provided oversight of post-award procurement activities by conducting eleven (11) construction site visits and three (3) desktop reviews of on-going projects.

The conclusion to the report stated:

"Based on SPO's review of 102 UH construction solicitations, UH's Administrative Procedures, and fourteen (14) post-award Site Visits, SPO finds that UH is

conducting construction procurements in a compliant, efficient, and transparent manner.”

Additionally, from fiscal years 2018 through 2020, the University processed a total 250 construction and construction-related procurement contracts and received a total of only eight protests. All of the protests were resolved and none of the protesters requested a hearing with the Department of Commerce and Consumer Affairs.

The University has tremendous regard for the Administrator and the entire State Procurement Office team. We appreciate the long-standing relationship based on respect and professional courtesy. However, under the structure imposed by Act 87 in 2013, the University was operating under a bifurcated procurement system. There was one set of procedures, templates, forms and approval work flows specific to goods and services, for which the President served as the Chief Procurement Officer; and another set of processes for construction and construction-related professional services that utilized the SPO forms, templates, and procedures, for which the SPO Administrator served as the Chief Procurement Officer for the University. This dual authority structure also caused confusion for UH personnel with procurement requirements, support staff processing procurement and related documents, and, more importantly, the vendor and contracting community who bid on University projects.

With the finding by SPO set forth in its Report to the Legislature that “UH is conducting construction procurements in a compliant, efficient, and transparent manner,” and the additional improvements that the University has made specifically to the management and solicitation of its construction projects, the University believes full Chief Procurement Officer authority should be permanently restored to the President. This is particularly important at a time when the University is expected to aggressively address its deferred maintenance backlog. With the additional safeguards and imposition of industry best practices, we believe the University has demonstrated that it can and will continue to conduct its construction procurements in a compliant, efficient, and transparent manner.

Thank you for the opportunity to testify in support of HB 2499 and respectfully request that the President be permanently reinstated as the Chief Procurement Officer for construction-related procurements of the University.