



STATE OF HAWAI'I | KA MOKU'ĀINA O HAWAI'I
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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
FINANCE

March 28, 2024, 3:30 p.m.

SENATE BILL 2536, SD1 HD1
RELATING TO PROCUREMENT PREFERENCES AND RECIPROCITY

Chair Yamashita, Vice Chair Kitagawa, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 2536, SD1 HD1. The State Procurement Office (SPO) appreciates the intent to support Hawaii's economy. While the SPO will not offer comments that the bill is to incentivize public accounting firms to operate locally and that the enactment of this bill is likely to result in Hawaii residents performing services under government accounting contracts. However, the SPO opposes Senate Bill 2536, SD1 HD1 in its entirety.

The SPO finds the additional language to Chapter 103D, Hawaii Revised Statutes (HRS), will unnecessarily limit the field of competition and is unwarranted with the current state of technology. Section 103D-101, HRS, "Requirement of ethical public procurement," states that all public employees shall conduct and participate in public procurement in an ethical manner and shall encourage economic competition by "ensuring all persons are afforded an equal opportunity to compete in a fair and open environment." Giving a preference to Hawaii accounting service businesses over non-Hawaii accounting service businesses is neither equal nor fair treatment in an industry that may not require a physical presence to conduct business.

There is no purpose in creating a preference for accounting service businesses as accounting services are professional services, procured under HRS section 103D-304, where award is not based upon a low bid price. Instead, selection of the professional is made from a list of qualified persons and is based on the following selection criteria in descending order of importance:

- 1) Experience and professional qualifications relevant to the project type;
- 2) Past performance on projects of similar scope for public agencies or private industry, including corrective actions and other responses to the notices of deficiencies;
- 3) Capacity to accomplish the work in the required time; and
- 4) Any additional criteria determined in writing by the selection committee to be relevant to the purchasing agency's needs or necessary and appropriate **to ensure full, open, and**

fair competition for professional services contracts, including requiring a Hawaii-based firm to provide the services.

Accounting or auditing services procured under HRS section 103D-303, competitive sealed proposals, is not based on qualifications first. Instead, award is based on evaluator factors, past performance on projects of similar scope for public agencies or private industry, and shall state the relative importance of price, past performance, and other evaluation factors where agencies can still stipulate that accounting firms must have independent knowledge of Hawaii State laws, must have experience in preparing governmental financial statements and working with State of Hawaii systems, must be a Hawaii-based business, etc. Also, specific evaluation criteria to be used may include but is not limited to technical capability and approach for meeting performance requirements, competitiveness and reasonableness of price, managerial capabilities, and best value factors. When applicable, cost is an evaluation factor, and the proposal with the lowest cost factor receives the highest available rating allocated to cost pursuant to HAR 3-122-52.

In a National Association of State Procurement Officials (NASPO) briefing paper on In-State Preferences, implementation of a local preference may lead to unintended consequences, such as less competition, higher prices, and impacts on our government procurement process. For example, as procurement professionals, preferences in procurement processes are viewed as increased cost to the state. Whether it is the award of the contract to the vendor with a preference or the procurement resources expended in applying, analyzing, and reviewing, preferences increase the cost of the contract. Historically, NASPO has opposed purchasing policies for in-state preferences. The National Institute of Governmental Purchasing (NIGP) has also opposed all types of preference laws and practices and views them “as impediments to the cost-effective procurement of goods, services and construction in a free enterprise system.”

The SPO opposes Senate Bill 2536 SD1 HD1, as there is no necessity for creating a statute for a local preference for accounting service businesses. As the SPO has emphasized in numerous testimonies, public procurement's primary objective is to be fair and provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion, or fraud in awarding of contracts. Additionally, limiting accounting services to just Hawaii-based firms does not ensure that Hawaii is getting the best services required and may have the unintended consequence of having to establish additional preferences for other Hawaii-based businesses for any other kinds of services for any of the methods of procurement, which may be problematic. Furthermore, there is no justification for a twenty percent (20%) preference.

Chapter 103D, HRS, the Hawaii Public Procurement Code, is the State's single source of public procurement policy to be applied equally and uniformly, while providing fairness, open competition, a level playing field, government disclosure, and transparency in the procurement and contracting process vital to good government.

This preference appears to assist local professional businesses, however, due to the reciprocal preference laws of many states, this preference may hurt local professional businesses when they try and acquire work out-of-state.

The SPO strongly urges that this bill be held without further action.

Thank you.



Date: March 28, 2024

To: Chair Kyle T. Yamashita
Vice Chair Lisa Kitagawa, and
Members of the House Committee on Finance

From: Cory Kubota, Managing Partner
Accuity LLP

Re: **SUPPORT** - S.B. 2536, S.D. 1, H.D. 1, Relating to Procurement Preferences and Reciprocity

My name is Cory Kubota and I am the managing partner of Accuity LLP, a public accounting firm based in Honolulu. We have been in Hawaii since 1951, first as Baker & Gillette, then as the Honolulu office of PricewaterhouseCoopers, and as Accuity since 2006. Our vision is to develop the next generation of Hawaii's leaders. Accuity and its subsidiaries currently employ more than 100 people.

I am testifying in strong support of this measure, which establishes a procurement preference for Hawaii accounting service businesses. Under this measure, a "Hawaii accounting service business" is an accounting business that has a commercial place of business in the State. To qualify as a Hawaii accounting service business, the business must certify that no less than 80% of the labor under the contract will be performed by Hawaii residents and that the business's commercial space is of sufficient size to accommodate these individuals who are performing services under the contract. This measure does not affect accounting contracts between accounting firms and their non-government clients.

There is a growing concern in Hawaii's accounting industry about a shortage of accountants due to a decrease in the number of University of Hawaii accounting graduates. This shortage of accountants could have significant implications for businesses and the economy, as the demand for accounting services continues to grow. One major reason for this trend is the lack of career opportunities for accounting graduates in Hawaii. The proposed procurement preference is an opportunity for the state and county governments to directly address the challenge of residents leaving or not returning due to a lack of career opportunities by incentivizing public accounting firms to operate locally.

It is important to note that the enactment of this measure is not a hindrance to competition as it does not prevent an out-of-state public accounting firm of any size from establishing an office in Hawaii and qualifying for this procurement preference. The enactment of this preference does not ensure that government accounting contracts will be awarded to Accuity or any specific

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accounting firm, however, the enactment is likely to result in Hawaii residents performing services under government accounting contracts. Furthermore, assuming that this procurement preference is adopted, the qualifying Hawaii accounting service businesses would still be competing with each other. Due to this competition, we do not believe that there would be a significant increase to the cost of procuring accounting services for the State.

This measure also expands the reciprocity exemption to apply to offers made in response to requests for proposals received under Hawaii Revised Statutes (HRS) §103D-303. Currently, the reciprocity exemption allows the state and county governments to consider procurement preferences enacted in the states where out-of-state bidders are domiciled in when evaluating bids received under HRS §103D-302 only. Applying the reciprocity preference to offers made in response to request for proposal will further support fair competition with other states and safeguard the interests of Hawaii businesses.

The House Committee on Labor & Government Operations inserted an amendment to HRS §103D-304(e) contained in Section 4 of H.D. 1. This amendment requires State agencies procuring accounting services through the professional services procurement method to consider, as part of the evaluation criteria, whether the accounting service business is located in Hawaii and otherwise meets the definition of a “Hawaii accounting service business” described above. This amendment is consistent with the objective of this measure and would apply in situations where accounting services are procured through the professional services method of procurement.

With respect to the proposed procurement preference, the benefit of employing Hawaii’s residents far exceeds any surface level additional cost that the State may incur in procuring accounting services.

When accounting services are procured from a company located in Hawaii, the tax revenue that the State will realize far exceeds any incremental increase in contract price. To qualify for the procurement preference proposed by this measure, 80% of services under the contract must be performed Hawaii residents. This means that Hawaii income tax will be imposed on the Hawaii service provider and its employees. On the other hand, if accounting services are procured from a non-Hawaii service provider, Hawaii income tax would only be imposed on the non-Hawaii service provider based on multistate apportionment but not on its employees. Thus, the State will realize significantly more income tax revenue when contracts are awarded to Hawaii service providers.

In addition, assuming that a non-Hawaii service provider is subject to General Excise Tax (GET) on fees earned from State contracts, the GET revenue on the contract service fees would be the same regardless of whether the contract is awarded to a Hawaii or non-Hawaii service provider. However, the State will benefit further from the additional GET revenue generated when a Hawaii service provider and its employees purchase goods and services with the service fees/wages earned from State contracts. In other words, by selecting a Hawaii service provider, the fees paid by the State will continue to circulate in the State. Conversely, when fees are paid to non-Hawaii



service providers, the State will not realize this additional GET revenue because very little, if any, of the contract service fees will be used to purchase goods or services in State by the non-Hawaii service provider or its employees.

I strongly urge you to consider the positive long-term impact that this measure can have on our state's economy, job retention, and fostering local business growth. We truly appreciate the Committee's willingness to hear this measure so that the conversation regarding the employment of Hawaii residents in our accounting industry may continue.

Thank you for the opportunity to testify in support of this measure.