



**STATE OF HAWAI'I | KA MOKU'ĀINA O HAWAI'I**  
**STATE PROCUREMENT OFFICE**

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TESTIMONY  
OF  
BONNIE KAHAKUI, ACTING ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE  
ON  
GOVERNMENT OPERATIONS  
JANUARY 28, 2025, 3:00 pm

SENATE BILL 615  
RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Gabbard, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 615. The State Procurement Office (SPO) provides the following comments and concerns.

The SPO initially had concerns about the amendments proposed for 103D-501, Hawaii Revised Statutes (HRS), because capping change orders may have unintended consequences, such as negatively impacting government agencies and ultimately resulting in higher costs to the taxpayer. Bidders and offerors may inflate their prices to cover possible increases and thereby retaining their original contract.

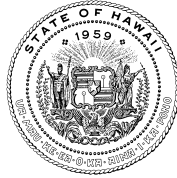
Additionally, suspending a project and reprocurring for those goods, services, or construction, over the 50% (fifty per cent) threshold will inevitably delay the project as a whole and possibly increase costs. There may be unforeseen circumstances beyond the agency's control that would necessitate change orders that may be time-sensitive, therefore halting a project to reprocur would not be in the best interest of the State.

In the event a new contract is executed, there may be challenges to any warranties or guarantees involving two or more contractors. It is unlikely a new vendor would take responsibility of work partially completed. Typically, warranties are only valid for a specific period and may be voided if alterations are made.

However, the proposed language provides flexibility to allow the head of the purchasing agency to approve change order(s), otherwise prohibited, to address and mitigate unusual circumstances that may arise that are in the best interest of the state.

Thank you for the opportunity to provide comments on this measure.

JOSH GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA



KEITH A. REGAN  
COMPTROLLER  
KA LUNA HO'OMALU HANA LAULĀ  
  
MEOH-LENG SILLIMAN  
DEPUTY COMPTROLLER  
KA HOPE LUNA HO'OMALU HANA LAULĀ

**STATE OF HAWAII | KA MOKU'ĀINA O HAWAII**  
**DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES | KA 'OIHANA LOIHELU A LAWELAWÉ LAULĀ**  
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY  
OF  
KEITH A. REGAN, COMPTROLLER  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
TO THE  
**COMMITTEE ON GOVERNMENT OPERATIONS**

JANUARY 28, 2024, 3:00 P.M.  
CONFERENCE ROOM 225 AND VIA VIDEOCONFERENCE, STATE CAPITOL

S.B. 615

RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Gabbard, and Members of the Committee, thank you for the opportunity to submit testimony on S.B. 615.

The Department of Accounting and General Services (DAGS) offers **comments** on the proposed measure to require that any procurement change order that increases the contract cost by more than fifty per cent or substantially increases the scope of work be considered a new contract for procurement purposes.

The proposed measure amends HRS 103D by adding a new subparagraph “(c)” requiring that any change order increasing the cost of an original contract by more than fifty percent, either alone or cumulative with prior change orders, or “substantially changes the scope of work for a contract” to be prohibited and considered a new procurement.

It should be noted that it is the department's practice and experience that every change order is approved only after it has been thoroughly investigated and found to be justified in the best interest of the state. We would ask that you please consider the following additional concerns:

- An increase in the cost of a contract should not be the sole basis for determining whether a new procurement is required, as it is not uncommon for construction work encountering unforeseen conditions (such as previously hidden or unknown geotechnical constraints) that require significant increases in contract costs to ensure a project is completed and satisfies the goal of providing needed facilities for the delivery of state services.
- The new subparagraph's provision regarding substantial changes in the scope of work is unnecessary as current provisions exist to prohibit substantial changes to the scope of contracted work. The department notes that substantial changes in the cost of contracted work can occur without entailing substantial changes to the scope of the contracted work.
- The new subparagraph provides that the head of purchasing agency may, with written justification, approve a change order otherwise prohibited by the subsection. Engaging in a redundant justification and approval process (i.e., given that department's existing practice provides that every change order is approved only after it has been thoroughly investigated and found to be justified in the best interest of the state) will delay the affected project schedule, which may contribute to further cost increases. In addition, as an unintended consequence this provision may provide a statutory pathway for

approval of change orders that involve substantial changes to the scope of work.

- The provision to require a change order to be regarded as a new procurement will add excessive amounts of time to completion of any affected project, as the transparency and competition requirements of the procurement code will require that the separate procurement be conducted through conventional means, with conventional timelines that may be expected to add months to the project schedule. If the separate procurement is awarded to the original contractor, the net result will have been an increase in project costs along with the schedule delay required for the separate procurement. If the separate procurement is not awarded to the original contractor, it should be expected that there will be conflicts between the two contractors working on the same site, with the further expectation that each contractor will file claims for interference and delay due to the activities of the other contractor.
- The provision to require a change order to be regarded as a new procurement does not address the need to identify a source of funding for that separate procurement. The funding for the original contract will have been encumbered into that original contract. While it might be possible to unencumber the funds from the original contract to fund the separate procurement, it would not be unusual for those funds to lapse upon unencumbrance, which would cause the separate procurement to be unfunded absent a separate appropriation.

We appreciate the opportunity to provide written testimony on this measure and look forward to additional discussions with the committee.



AMERICAN COUNCIL OF ENGINEERING COMPANIES  
of Hawaii

**LATE**

**2024-2025 Board of Directors**

January 27, 2025

**President**

Shannon Holman, P.E.  
Orion Engineers & Associates  
Ph: (808) 282-7986

Senate Committee on Government Operations  
Hearing Date: Tuesday, January 28, 3:00 p.m.

**President-Elect**

Charles Jury, P.E.  
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Honorable Chair McKelvey, Vice Chair Gabbard, and Members of the Senate Committee on Government Operations

Subject: **SB 615, Relating to Procurement  
Providing Comments**

**Treasurer**

Kealohi Sandefur, P.E.  
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Dear Chair McKelvey, Vice Chair Gabbard, and Committee Members:

**Secretary**

Tim Goshi, P.E.  
KAI Hawaii, Inc.  
Ph: (808) 791-3966

The American Council of Engineering Companies of Hawaii (ACECH) represents more than 70 member firms with over 1,500 employees throughout Hawaii. **ACECH OPPOSES this bill.**

**Past President**

Kyle Kaneshiro, P.E.  
The Limtiaco Consulting Group  
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ACECH supports responsible spending of taxpayer monies, however during the planning and design phase of projects, the project objectives and direction can change. These changes can occur as part of the typical engineering process and be within the original scope of work. Such changes can result in additional professional services. We're concerned that this "one size fits all" approach may create problems for complex or difficult projects. Procurement under a new contract would require a new Qualification Based Selection (QBS) process which could ultimately delay the completion and result in a higher total cost for the project.

**National Director**

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Respectfully submitted,  
AMERICAN COUNCIL OF ENGINEERING COMPANIES OF HAWAII

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