

STAND. COM. REP. NO.

Honolulu, Hawaii

RE: Fact Finding on  
Procurement in the  
State of Hawaii

Honorable Ronald D. Kouchi  
President of the Senate  
Thirty-First State Legislature  
State of Hawaii

Sir:

Your Special Committee on State of Hawaii Procurement, begs leave to report as follows:

The purpose and intent of this measure is to set forth the findings and recommendations of the Special Committee on State of Hawaii Procurement (Committee) regarding procurement within the State of Hawaii.

The following members were appointed to your Committee:

Senator Sharon Moriwaki, Chair;  
Senator Donovan Dela-Cruz;  
Senator Michelle Kidani;  
Senator Donna Mercado Kim; and  
Senator Kurt Fevella.

## I. Background

On July 30, 2021, pursuant to Senate Rule 20,<sup>1</sup> the Senate President appointed a Senate Special Committee on Accountability to conduct fact finding through an informational briefing or briefings, as may be necessary, on procurement within the State of Hawaii to improve state procurement policies and processes. This fact-finding would include but not be limited to specifically

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<sup>1</sup> Rules of the Senate, R. 20 at 10 (State of Hawaii 2021-2022) (2019). (last accessed on November 10, 2021) from <https://www.capitol.hawaii.gov/docs/SenateRules.pdf>



itemized information outlined in the April 26, 2021, memorandum requesting the activation of a Senate Special Committee on State of Hawaii Procurement.<sup>2</sup>

The findings of your Committee will assist the Senate Standing Committee on Government Operations to develop procurement reform legislation to be introduced in the 2022 Regular Session.

Prior to holding its informational briefings, your Committee requested that all executive departments submit information on its contracts and bid protests to focus your Committee's fact finding.<sup>3</sup> Specifically, your Committee requested information on all contracts valued at \$100,000 or more over the past three years, including the following details for each of these contracts:

- Name of the general contractor,
- Type,
- Brief description of the scope,
- Amount at which the contract was awarded,
- Final cost,
- Time period,
- Number of approved change orders, and
- Number of approved time extensions.

Based on the information available at the time,<sup>4</sup> your Committee determined that it would like additional information on the state procurement policies and processes from selected departments with large contracts as follows:

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<sup>2</sup> A copy of the request memorandum is available online at <https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/Activation-of-Special-Committee-on-Procurement-04.26.2021.pdf> (last visited on January 18, 2022).

<sup>3</sup> A copy of the memo requesting certain contract information from the departments is available online at <https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/Contracts Memo to Departments 06.10.21.pdf> (last visited on January 14, 2022).

<sup>4</sup> Not all departments were timely in responding to this request. Links to the responses your Committee received from the departments can be found under the "Executive Department Contracts Information" heading at the Special Committee on Procurement webpage at the State Capitol website. The webpage is available online at <https://www.capitol.hawaii.gov/specialcommittee.aspx?comm=scp&year=2021> (last visited on January 14, 2022).



- Department of Accounting and General Services (DAGS), particularly the Division of Public Works (DPW);
- University of Hawaii (UH);
- Department of Education (DOE);
- Department of Transportation (DOT), particularly the Airports Division (DOT-A);
- Department of Health (DOH); and
- Department of Land and Natural Resources (DLNR).

All information received by your Committee is archived on the Special Committee on Procurement webpage at the State Capitol website.<sup>5</sup>

## II. Informational Briefings

Your Committee invited the aforementioned departments, specifically the head of the department, the department's procurement officer(s) and any relevant staff, to a public informational briefing to present the department's procurement and bid protest procedures, contracting policies and procedures, along with any challenges the department faces in procurement and suggested recommendations for addressing these challenges, if any.

In addition, your Committee requested that these departments provide your Committee with certain information and documents for your Committee to review prior to the informational briefings. Specifically, the departments were requested to provide the following information:

- Brief description on the department's procurement procedures, including average timeline from procurement to execution of various contracts for goods, services, and construction;
- Brief description of the department's bid protest procedures, including average time for department resolution;
- Training procedures and certification held by the department's procurement officers and their names;

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<sup>5</sup> The Special Committee on Procurement webpage is available online at <https://www.capitol.hawaii.gov/specialcommittee.aspx?comm=scp&year=2021> (last visited on January 14, 2022).



- Challenges in procurement; and
- Suggested recommendations to address these challenges.

Your Committee held informational briefings on August 4th, 11th, 12th, 17th, and 18th; and September 23rd. No public testimony was received.

Interim State Procurement Officer, Bonnie Kahakui, was also invited to attend your Committee's informational briefings.

Following the informational briefing on September 23rd, Ms. Kahakui agreed to meet with your Committee on October 10th to brief your Committee on its assessment of state procurement and contract management procedures, including recommendations for improvement.

These meetings were recorded via Zoom and livestreamed on the Hawaii State Senate YouTube page. Those recordings will serve as the official record of the informational briefings.<sup>6</sup>

#### A. Department of Accounting and General Services (DAGS)

On July 28, 2021, your Committee sent a request to DAGS,<sup>7</sup> inviting Comptroller Curt Otaguro, DAGS' procurement officer(s) and any relevant staff to a public informational briefing.<sup>8</sup> Prior to the informational briefing on August 4, 2021, DAGS provided your Committee with two sets of PowerPoint slides: One regarding procurement across the department<sup>9</sup> and the other specifically on

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<sup>6</sup> Recordings of the informational briefings are available online at <https://www.youtube.com/c/HawaiiSenate/videos> (last visited on November 25, 2021), [SCP Informational Briefing 8-4-2021 1:30pm](#), [SCP Informational Briefing 8-11-2021 10:30am](#), [SCP Informational Briefing 8-12-2021 1pm](#), [SCP Informational Briefing 8-17-2021 10:30am](#), [SCP Informational Briefing 8-18-2021 1pm](#), [SCP Informational Briefing 9-23-2021 1:30pm](#), and [SCP Informational Briefing 10-12-2021 1pm](#).

<sup>7</sup> A copy of the request to DAGS for an informational briefing is available online at [https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/OTAGURO\\_CURT\\_2021-07-28\\_Procurement\\_Briefing.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/OTAGURO_CURT_2021-07-28_Procurement_Briefing.pdf) (last visited on December 13, 2021).

<sup>8</sup> A copy of the hearing notice for the July 28, 2021 DAGS informational briefing is available online at [https://www.capitol.hawaii.gov/session2021/hearingnotices/HEARING\\_SCP\\_08-04-21\\_INFO.PDF](https://www.capitol.hawaii.gov/session2021/hearingnotices/HEARING_SCP_08-04-21_INFO.PDF) (last visited on December 13, 2021).

<sup>9</sup> A copy of the information provided by DAGS prior to the July 28, 2021 informational briefing is available online at



procurement within the Division of Public Works (DPW).<sup>10</sup> Summary notes on the informational briefing were taken and recorded.<sup>11</sup> Your Committee sent a letter containing additional questions for DPW on August 13, 2021.<sup>12</sup> Your Committee received DPW's response on August 27, 2021.<sup>13</sup>

### B. University of Hawaii (UH)

On July 29, 2021, your Committee sent a request to UH,<sup>14</sup> inviting President David Lassner, UH's procurement officer(s) and any relevant staff to a public informational briefing.<sup>15</sup> Prior to the informational briefing on August 11, 2021, UH provided your Committee with a letter containing the additional procurement information requested for review by your Committee and charts on

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DAGS Powerpoint to SCP 08.04.21.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DAGS_Powerpoint_to_SCP_08.04.21.pdf) (last visited on December 13, 2021).

<sup>10</sup> A copy of the information provided by DAGS' PWD prior to the July 28, 2021 informational briefing is available online at

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DAGS PWD Presentation to SCP 08.04.21.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DAGS_PWD_Presentation_to_SCP_08.04.21.pdf) (last visited on December 13, 2021).

<sup>11</sup> A copy of the summary notes of the DAGS informational briefing is available online at

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DAGS Summary Notes 08.04.21.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DAGS_Summary_Notes_08.04.21.pdf) (last visited on December 14, 2021).

<sup>12</sup> A copy of the additional questions sent to DAGS is available online at

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DAGS SCP Follow Up Questions \(2\).pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DAGS_SCP_Follow_Up_Questions_(2).pdf) (last visited on December 14, 2021).

<sup>13</sup> A copy of DAGS' response to SCP's additional questions is available online at [https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DAGS Follow Up Response \(1\).pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DAGS_Follow_Up_Response_(1).pdf),

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DAGS Follow Up Attachment 1 \(1\).pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DAGS_Follow_Up_Attachment_1_(1).pdf),

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DAGS Follow Up Attachment 2.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DAGS_Follow_Up_Attachment_2.pdf),

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DAGS Follow Up Attachment 3.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DAGS_Follow_Up_Attachment_3.pdf),

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DAGS Follow Up Attachment 4.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DAGS_Follow_Up_Attachment_4.pdf), and

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DAGS Follow Up Attachment 5.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DAGS_Follow_Up_Attachment_5.pdf) (last visited on January 12, 2022).

<sup>14</sup> A copy of the request to UH for an informational briefing is available online at

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/HAYASHTI, KEI TH 2021-07-29 Procurement Briefing \(1\).pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/HAYASHTI,_KEI_TH_2021-07-29_Procurement_Briefing_(1).pdf) (last visited on December 14, 2021).

<sup>15</sup> A copy of the hearing notice for the August 11, 2021 UH informational briefing is available online at

[http://www.capitol.hawaii.gov/session2021/hearingnotices/HEARING\\_SCP\\_08-11-21 INFO.PDF](http://www.capitol.hawaii.gov/session2021/hearingnotices/HEARING_SCP_08-11-21_INFO.PDF) (last visited on December 14, 2021).



UH bid protests from 2020 and 2021, UH construction and professional services contracts over \$100,000, and UH personal services contracts over \$100,000.<sup>16</sup> Summary notes on the informational briefing were taken and recorded.<sup>17</sup> Your Committee sent a letter containing additional questions to UH on August 11, 2021.<sup>18</sup> Your Committee received UH's response on October 8, 2021.<sup>19</sup>

### C. Department of Education (DOE)

On July 29, 2021, your Committee sent a request to DOE,<sup>20</sup> inviting Interim Superintendent Keith Hayashi, DOE's procurement officer(s) and any relevant staff to a public informational briefing.<sup>21</sup> In addition to their presentation on August 12, 2021, DOE provided your Committee with PowerPoint slides, spreadsheets of DOE Office of Facilities and Operations (OFO) contracts, DOE non-OFO contracts, and DOE bid protests for the fiscal year (FY)

<sup>16</sup> A copy of the information provided by UH prior to the August 11, 2021 informational briefing is available online at [https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/CONTRACTS\\_UO\\_H.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/CONTRACTS_UO_H.pdf) and

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/CONTRACTS\\_UO\\_H\(goods\\_services\).pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/CONTRACTS_UO_H(goods_services).pdf) (last visited on December 23, 2021).

In addition, the PowerPoint presentation that UH used in the informational briefing is available online at

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/UOH\\_Presentation\\_to\\_SCP\\_08.11.21.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/UOH_Presentation_to_SCP_08.11.21.pdf) (last visited on December 23, 2021)

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/UOH\\_Presentation\\_to\\_SCP\\_08.11.21.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/UOH_Presentation_to_SCP_08.11.21.pdf) (last visited on December 14, 2021).

<sup>17</sup> A copy of the summary notes of the UH informational briefing is available online at

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/UOH\\_Summary\\_Notes\\_08.11.21.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/UOH_Summary_Notes_08.11.21.pdf) (last visited on December 14, 2021).

<sup>18</sup> A copy of the additional questions sent to UH is available online at

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/UOH\\_SCP\\_Follow\\_Up\\_Questions\\_\(2\).pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/UOH_SCP_Follow_Up_Questions_(2).pdf) (last visited on December 14, 2021).

<sup>19</sup> A copy of UH's response to SCP's additional questions is available online at

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/UOH\\_Follow\\_Up\\_Response\\_\(1\).pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/UOH_Follow_Up_Response_(1).pdf) and

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/UOH\\_Follow\\_Up\\_Attachment.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/UOH_Follow_Up_Attachment.pdf) (last visited on January 12, 2022).

<sup>20</sup> A copy of the request to UH for an informational briefing is available online at

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/LASSNER\\_DAV\\_ID\\_2021-07-29\\_Procurement\\_Briefing\\_\(1\).pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/LASSNER_DAV_ID_2021-07-29_Procurement_Briefing_(1).pdf) (last visited on December 14, 2021).

<sup>21</sup> A copy of the hearing notice for the DOE informational briefing is available online at

[http://www.capitol.hawaii.gov/session2021/hearingnotices/HEARING\\_SCP\\_08-12-21\\_INFO.PDF](http://www.capitol.hawaii.gov/session2021/hearingnotices/HEARING_SCP_08-12-21_INFO.PDF) (last visited on December 14, 2021).



2021.<sup>22</sup> Summary notes on the informational briefing were taken and recorded.<sup>23</sup> Your Committee sent a letter containing additional questions for DOE on August 20, 2021. Your Committee received DOE's response on October 4, 2021.<sup>24</sup>

#### D. Department of Transportation (DOT)

On August 3, 2021, your Committee sent a request to DOT,<sup>25</sup> inviting DOT, Airports Division (DOT-A) Deputy Director Ross Higashi, DOT-A's procurement officer(s) and any relevant staff to a public informational briefing.<sup>26</sup> In addition to their presentation on August 17, 2021, DOT provided your Committee with PowerPoint slides, a copy of Form SPO-036, the SPO Procurement Delegation Form; DOT Procurement Delegation memo, and a spreadsheet of DOT employees with procurement signing authority.<sup>27</sup> Summary notes on the informational briefing were taken and

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<sup>22</sup> A copy of the PowerPoint presentation provided by DOE prior to the August 12, 2021 informational briefing is available online at [https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOE Presentation to SCP 01.12.21.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOE%20Presentation%20to%20SCP%2001.12.21.pdf) (last visited on December 23, 2021).

Copies of the additional documents provided by DOE are available online at: [https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/CONTRACTS DE.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/CONTRACTS%20DE.pdf) (last visited on January 12, 2022).

<sup>23</sup> A copy of the summary notes of the August 12, 2021 DOE informational briefing is available online at [https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOE Summary Notes 08.12.21.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOE%20Summary%20Notes%2008.12.21.pdf) (last visited on December 14, 2021).

<sup>24</sup> A copy of DOE's response to SCP's additional questions is available online at [https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOE Follow Up Response.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOE%20Follow%20Up%20Response.pdf) (last visited on January 12, 2022).

<sup>25</sup> A copy of the request to DOT for an informational briefing is available online at [https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/HIGASHI, ROSS 2021-08-03 Procurement Briefing \(1\).pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/HIGASHI,%20ROSS%202021-08-03%20Procurement%20Briefing%20(1).pdf) (last visited on December 14, 2021).

<sup>26</sup> A copy of the hearing notice for the DOT-A informational briefing is available online at [http://www.capitol.hawaii.gov/session2021/hearingnotices/HEARING SCP 08-17-21 INFO .PDF](http://www.capitol.hawaii.gov/session2021/hearingnotices/HEARING%20SCP%2008-17-21%20INFO.PDF) (last visited on December 14, 2021).

<sup>27</sup> A copy of the information provided by DOT prior to the August 17, 2021 informational briefing is available online at [https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT Airports Presentation to SCP 08.17.21.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT%20Airports%20Presentation%20to%20SCP%2008.17.21.pdf), [https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT Airports Handout A 08.17.21.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT%20Airports%20Handout%20A%2008.17.21.pdf), [https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT Airports Handout B 08.17.21.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT%20Airports%20Handout%20B%2008.17.21.pdf), and [https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT Airports Handout C 08.17.21.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT%20Airports%20Handout%20C%2008.17.21.pdf) (last visited on December 23, 2021).



recorded.<sup>28</sup> Your Committee sent a letter containing additional questions for DOT and DOT-A on August 24, 2021.<sup>29</sup> Your Committee received responses from DOT on September 13, 2021.<sup>30</sup>

#### E. Department of Health (DOH)

On August 3, 2021,<sup>31</sup> your Committee sent a request to DOH, inviting Director Elizabeth Char, DOH's procurement officer(s) and any relevant staff to a public informational briefing.<sup>32</sup> In addition to their presentation on August 18, 2021, DOH provided your Committee with PowerPoint slides and a spreadsheet of DOH contracts.<sup>33</sup> Summary notes on the informational briefing were

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<sup>28</sup> A copy of the summary notes of the DOT informational briefing is available online at:

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT\\_Summary\\_Notes\\_08.17.21.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT_Summary_Notes_08.17.21.pdf) (last visited on December 14, 2021).

<sup>29</sup> A copy of the additional questions sent to DOT is available online at [https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT\\_SCP\\_Follow\\_Up\\_Questions\\_\(1\).pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT_SCP_Follow_Up_Questions_(1).pdf) (last visited on December 14, 2021).

<sup>30</sup> A copy of DOT and DOT-A's response to SCP's additional questions is available online at

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT\\_Follow\\_Up\\_Response\\_\(1\).pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT_Follow_Up_Response_(1).pdf),

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT\\_Follow\\_Up\\_Attachment\\_1.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT_Follow_Up_Attachment_1.pdf),

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT\\_Follow\\_Up\\_Attachment\\_2.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT_Follow_Up_Attachment_2.pdf),

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT\\_Follow\\_Up\\_Attachment\\_3.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT_Follow_Up_Attachment_3.pdf),

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT\\_Follow\\_Up\\_Attachment\\_4.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOT_Follow_Up_Attachment_4.pdf),

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOH\\_Follow\\_Up\\_Attachment\\_5.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOH_Follow_Up_Attachment_5.pdf),

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOH\\_Follow\\_Up\\_Attachment\\_6.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOH_Follow_Up_Attachment_6.pdf), and

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOH\\_Follow\\_Up\\_Attachment\\_7.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOH_Follow_Up_Attachment_7.pdf) (last visited on January 12, 2022).

<sup>31</sup> A copy of the request to DOH for an informational briefing is available online at

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/CHAR,\\_LIBBY\\_2021-08-03\\_Procurement\\_Briefing\\_\(1\)\\_1\).pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/CHAR,_LIBBY_2021-08-03_Procurement_Briefing_(1)_1).pdf) (last visited on December 14, 2021).

<sup>32</sup> A copy of the hearing notice for the DOH informational briefing is available online at

[http://www.capitol.hawaii.gov/session2021/hearingnotices/HEARING\\_SCP\\_08-18-21\\_INFO.PDF](http://www.capitol.hawaii.gov/session2021/hearingnotices/HEARING_SCP_08-18-21_INFO.PDF) (last visited on December 14, 2021).

<sup>33</sup> A copy of the information provided by DOH prior to the August 18, 2021 informational briefing is available online at

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOH\\_Presenta](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOH_Presenta)





taken and recorded.<sup>34</sup> Your Committee sent a letter containing additional questions for DOH on August 25, 2021.<sup>35</sup> Your Committee received DOH's response on September 20, 2021.<sup>36</sup>

#### F. Department of Land and Natural Resources (DLNR)

On August 3, 2021, your Committee sent a request to DLNR,<sup>37</sup> inviting Chair Suzanne Case, DLNR's procurement officer(s) and any relevant staff to a public informational briefing.<sup>38</sup> In addition to their presentation on September 23, 2021, DLNR provided your Committee with PowerPoint slides and a partial spreadsheet of DLNR

tion to SCP 08.18.21.pdf and

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/CONTRACTS DOH \(UPDATED 8.13.21\).pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/CONTRACTS DOH (UPDATED 8.13.21).pdf) (last visited December 23, 2021).

<sup>34</sup> A copy of the summary notes of the DOH informational briefing is available online at

<https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOH Summary Notes 08.18.21.pdf> (last visited on December 14, 2021).

<sup>35</sup> A copy of the additional questions sent to DOH is available online at

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOH SCP Follow Up Questions \(2\).pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOH SCP Follow Up Questions (2).pdf) (last visited on December 14, 2021).

<sup>36</sup> A copy of DOH's response to SCP's additional questions is available online at [https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOH Follow Up Response \(2\).pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOH Follow Up Response (2).pdf),

<https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOH Follow Up Attachment 1.pdf>,

<https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOH Follow Up Attachment 2.pdf>,

<https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOH Follow Up Attachment 3.pdf>,

<https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOH Follow Up Attachment 4.pdf>,

<https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOH Follow Up Attachment 5.pdf>,

<https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOH Follow Up Attachment 6.pdf>; and

<https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DOH Follow Up Attachment 7.pdf> (last visited on January 12, 2022).

<sup>37</sup> A copy of the request to DLNR for an informational briefing is available online at

[https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/CASE, SUZANNE 2021-09-13 Procurement Briefing \(1\).pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/CASE, SUZANNE 2021-09-13 Procurement Briefing (1).pdf) (last visited on December 14, 2021).

<sup>38</sup> A copy of the hearing notice for the DLNR informational briefing is available online at

<http://www.capitol.hawaii.gov/session2021/hearingnotices/HEARING SCP 09-23-21 INFO .PDF> (last visited on December 14, 2021).



contracts.<sup>39</sup> Summary notes on the informational briefing were taken and recorded.<sup>40</sup>

#### G. State Procurement Office (SPO)

On October 10, 2021,<sup>41</sup> your Committee met with State Procurement Officer Bonnie Kahakui, SPO Chief Policy and Compliance Officer Kevin Takaesu, and Purchasing Supervisor Donna Tsuruda-Kashiwabara to review procurement policies and procedures statewide. During this meeting,<sup>42</sup> your Committee focused on the following areas of statewide concern:

- (1) Bid protests and change orders/scope of work;
- (2) Performance reviews of consultants and contractors;
- (3) Departmental procurement and contract management procedures;
- (4) Effective management of statewide procurement and contracting, specifically the:
  - (A) Organization of the State Procurement Policy Board, State Procurement Office, and Department Procurement Offices;
  - (B) Training and certification of procurement officers, and

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<sup>39</sup> A copy of the information provided by DLNR prior to the September 23, 2021 informational briefing is available online at [https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DLNR\\_Presentation\\_to\\_SCP\\_09.23.21.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DLNR_Presentation_to_SCP_09.23.21.pdf) (last visited on December 14, 2021).

<sup>40</sup> A copy of the summary notes of the DLNR informational briefing is available online at [https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DLNR\\_Summary\\_Notes\\_09.23.21.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/DLNR_Summary_Notes_09.23.21.pdf) (last visited on December 14, 2021).

<sup>41</sup> A copy of the hearing notice for the SPO informational briefing is available online at [http://www.capitol.hawaii.gov/session2021/hearingnotices/HEARING\\_SCP\\_10-12-21\\_INFO.PDF](http://www.capitol.hawaii.gov/session2021/hearingnotices/HEARING_SCP_10-12-21_INFO.PDF) (last visited on December 14, 2021).

<sup>42</sup> A copy of the PowerPoint provided by SPO prior to the October 10, 2021 informational briefing is available online at [https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/SPO\\_Presentation\\_to\\_SCP\\_10.12.21.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/SPO_Presentation_to_SCP_10.12.21.pdf) (last visited December 23, 2021).



(C) Audit of department procurement and contract officers; and

(5) Additional issues and recommendations.

Summary notes on the informational briefing were taken and recorded.<sup>43</sup> On October 21, 2021, your Committee sent a letter containing additional questions for SPO.<sup>44</sup> Your Committee received SPO's response on October 22, 2021.<sup>45</sup>

### III. Findings and Discussion

In conducting its informational briefings and reviewing the materials provided by the departments, your Committee found common themes, concerns, and recurring problems with the following:

#### A. Problems with Change Orders and Changes in Scope

All purchasing departments and agencies coming before your Committee agreed that regardless of how well a construction project's specifications are drafted, there will always be a chance of change orders. Your Committee finds that the State has no existing standards and criteria for determining change orders beyond the original scope of work to require the issuance of a separate solicitation for the additional work. Your Committee notes that in its October 22, 2021 response to your Committee's follow-up questions, SPO recommended procuring a consultant to review Federal Acquisition Regulations on change orders and conduct an in-depth analysis on whether the State should align its construction procurement provisions with federal construction procurement laws.

#### B. Problems with Training and Lack of Staffing

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<sup>43</sup> A copy of the summary notes of the SPO informational briefing is available online at [https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/SPO\\_Summary\\_Notes\\_10.12.21.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/SPO_Summary_Notes_10.12.21.pdf) (last visited on December 14, 2021).

<sup>44</sup> A copy of the additional questions sent to SPO is available online at [https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/SPO\\_SCP\\_Follow\\_Up\\_Questions\\_\(1\).pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/SPO_SCP_Follow_Up_Questions_(1).pdf) (last visited on December 14, 2021).

<sup>45</sup> A copy of SPO's response to SCP's additional questions is available online at [https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/SPO\\_Follow\\_Up\\_Response.pdf](https://www.capitol.hawaii.gov/committeefiles/special/SCP/Documents/SPO_Follow_Up_Response.pdf) (last visited on January 12, 2022).



Currently, the State operates on a decentralized procurement system where each purchasing department and agency has the authority to procure the goods, services, and construction projects that it needs. Your Committee finds that there is an inconsistent application of procurement law and rules across the departments and agencies.

### 1. Performance Reviews/Audits

Hawaii Revised Statutes (HRS) sections 103D-107 and 103D-108, establish and provide for the responsibilities of a compliance unit within the Office of the Auditor to conduct periodic reviews and audits of the procurement practices within the State and section 103D-206, HRS, allows the administrator of SPO to conduct periodic reviews of the procurement practices and procedures of all governmental bodies. However, due to the lack of resources, audits and periodic reviews of purchasing departments and agencies have not been performed. SPO, however, confirmed that it has performed investigations of situations that appeared to be inconsistent with the procurement statutes and rules of the State.

### 2. Training and Certification

Most, if not all, departments before your Committee reported a current or predicted lack of staff with expertise in procurement. Pursuant to 103D-110, HRS, each state procurement officer is required to attend a fundamental procurement practices training and development session within sixty-days of their appointment. Your Committee finds that most purchasing departments and agencies require their procurement officers and employees that conduct procurement to complete the initial training workshops. However, your Committee notes that the deputy attorneys general who advise purchasing departments and agencies on procurement currently are not required to attend mandatory procurement training.

### 3. Penalties for non-compliant procurement officers

Section 103D-106, HRS, states that the intentional violation of the procurement code and rules is a misdemeanor subject to certain penalties and fines. Although your Committee has yet to find any clear cases or appeals of alleged intentional violations



of the procurement code and rules, there have been clear cases of noncompliance.

#### 4. State Procurement Policy Board Vacancies

SPO reported that the State Procurement Policy Board established under section 103D-201, HRS, has not been active since May 2019 because of a lack of quorum. Coupled with the difficulty to attract potential qualified candidates for nomination and confirmation, your Committee finds that the continuous vacancies and inability of the State Procurement Policy Board to convene has hampered its ability to carry out its duties as established under section 103D-202, HRS.

#### C. Emergency Procurement

In recent years, DOT submitted a bill for introduction that would authorize emergency procurements in situations that are necessary to protect against further loss or damage to public property, or to prevent or minimize serious disruptions in government services. This measure also would remove the need for approval from the Chief Procurement Officer for these emergency procurements, provided that an accounting report is submitted to the Legislature within sixty days after the end of the fiscal year in which the emergency procurement was made. However, SPO is concerned as this measure, which would expand the definition of what constitutes an emergency to include repairs and maintenance, could lead to the abuse of emergency procurement.

#### D. Proper Use of Procurement Exemptions and Preferences

##### 1. Professional Services Procurement

In 2014, the State Procurement Policy Board repealed section 3-122-66, Hawaii Administrative Rules, which allowed the head of a purchasing agency to waive the requirement for at least three qualified persons to be submitted to the head of the purchasing agency for the procurement of professional services.<sup>46</sup> Since then,

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<sup>46</sup> This was due to the Hawaii Supreme Court's decision of Asato v. Procurement Policy Board, 322 P.3d 228 (Haw. S. Ct. 2014). A copy of the opinion is available online at [https://scholar.google.com/scholar\\_case?case=14235661162253479589](https://scholar.google.com/scholar_case?case=14235661162253479589) (last visited on January 14, 2022).



departments and agencies enter a cycle of re-solicitation of professional services, when even less than three qualified persons are available. Your Committee finds that the resulting re-solicitation cycle is an inefficient use of time and state resources.

## 2. Exemptions for Construction Procurement

Due to the nature of construction, purchasing departments and agencies may encounter unforeseen physical conditions which were not known nor considered when drafting the scope of work to be performed in their invitation for bids or requests for proposals. In some cases, the additional work is necessary for the performance of the construction project; but as that work was not specified in the project's plans, it should be procured separately pursuant to the State Procurement Code. Your Committee finds that there are situations where the separate procurement of this additional work increases both costs and delays.

## 3. Preference for Hawaii Products

The Legislature has historically provided incentives to promote the use of local products and support local industries and, accordingly, enacted a preference for the use of Hawaii products in public procurement in 1994. SPO reported that it is common practice for local contractors and subcontractors to source their products locally due to the availability and competitive pricing of local products. Your Committee finds that a preference for Hawaii products may not be necessary to incentivize the use and procurement of local products.

### E. Problems with Competitive Bidding

#### 1. Preference for Apprenticeship

Section 103-55.6, HRS, allows purchasing departments and agencies to decrease a bid amount by five percent on public works projects with an estimated value of \$250,000 or greater when the bidder is a party to an apprenticeship agreement with the Department of Labor and Industrial Relations (DLIR) for each apprenticeable trade employed to perform the project. One of the departments reported that evaluating an apprenticeship preference for award takes a substantial amount of time.



## 2. Notice of Project Cancellation

Your Committee finds that the reason for the cancellation of an invitation for bid or request for proposal "in the public's best interest" is noted in the project's contract file, but not publicly posted. One of the requirements of ethical public procurement pursuant to section 103D-101, HRS, includes ensuring that all persons are afforded an equal opportunity to compete in a fair and open environment. Your Committee finds that the transparency necessary for an open environment should also apply in all stages of the procurement process, including when a solicitation is cancelled. Your Committee further finds that the public has a right to know the specific reason why a solicitation was cancelled.

### F. Additional Findings

#### 1. Tracking Bid Protest Data

Departments are required to retain records under section 103D-212, HRS, and SPO is required to collect information on bid protests under section 103D-701.3, HRS. SPO collects this information through SPO Form 043.<sup>47</sup> Your Committee noted that the statistics from the form could be used to identify and assess problem areas to be assessed, addressed, and/or reduced, including further training of purchasing departments and agencies to prevent problems.

Through discussions with your Committee, SPO updated Form 043 to include factors that would help identify problem areas, such as the detailed reason for the protest, length of the protest, and procurement officer of the project protested. During the October 12, 2021 SPO informational briefing, SPO stated that it plans to review the information it receives each quarter to identify any state or departmental procurement trends and issues.

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<sup>47</sup> A copy of SPO-043 Report of Procurement Protest is available online at [https://spo.hawaii.gov/wp-content/uploads/2021/10/SPO-043\\_10-2021.xls](https://spo.hawaii.gov/wp-content/uploads/2021/10/SPO-043_10-2021.xls) (last visited on January 14, 2022).



## 2. Reduction of Bid Protests

The past legislative session saw the passage of Act 224, Session Laws of Hawaii 2021.<sup>48</sup> Following the passage of this Act, your Committee noted the immediate reduction of bid protests for the award of public works projects, likely due to the increase in the cash or protest bond amount for a party initiating an administrative proceeding for review.

## IV. Recommendations

Based on the discussion and findings above, your Committee recommends that:

- (1) The following procurement reform legislation be introduced in the 2022 Regular Session:
  - (A) A bill that repeals the State Procurement Policy Board and clarifies that the State Procurement Office has the sole responsibility to adopt, amend, or repeal any administrative rules associated with the State Procurement Code;
  - (B) A bill that allows purchasing agencies to seek alternative procurement approval for the procurement of professional services when there are fewer than three qualified persons;
  - (C) A bill that adds construction procurement as an exemption for when multiple sources are available but not practicable nor advantageous to the State;

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<sup>48</sup> Act 224 (2021) amended the protest bond amount for a party initiating an administrative proceeding for review of a decision on the solicitation or award of a competitive sealed bidding or competitive sealed proposal contract to the singular rate of one percent of the estimated value of the contract. This Act also streamlined the procurement process by requiring procurement officers to respond to protests to the awards of construction contracts and airport contracts that are not resolved by mutual agreement, within seventy-five calendar days of receipt of the protests with an extension of the forty-five calendar days for extenuating circumstances. A copy of the Act is available online at [https://www.capitol.hawaii.gov/session2021/bills/SB1329\\_CD1\\_PDF](https://www.capitol.hawaii.gov/session2021/bills/SB1329_CD1_PDF) (last visited on January 14, 2022).





- (D) A bill that repeals the "Hawaii product" preference in a bid or proposal for purchase; and
  - (E) A bill that requires purchasing departments and agencies to publicly post on an electronic notification system for a minimum of ten business days the reason for cancelling an invitation for bid or request for proposal; and
- (2) That the State Procurement Office take the following administrative actions:
- (A) Develop a procurement checklist for all purchasing departments and agencies to include in each procurement document file, thereby ensuring that all approvals, forms, and processes are properly completed and performed;
  - (B) Require all purchasing departments and agencies to establish a reporting function on their platforms to track the procurement training and renewal periods of all employees that conduct procurement;
  - (C) Consult with the Department of Commerce and Consumer Affairs, Department of the Attorney General, and State Ethics Commission, as necessary, on whether any proposed legislation or amendment of administrative rules is necessary to address cases of noncompliance with procurement laws and rules;<sup>49</sup>
  - (D) In accordance with its October 22, 2021 response to your Committee's follow-up questions, consider allowing the head of a purchasing department or agency to approve emergency procurements with a value less than \$100,000; provided that the purchasing department or agency submits an Emergency Procurement Form (SPO-002) to SPO; provided further that the purchasing department or agency post any award with a value greater than

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<sup>49</sup> According to SPO's October 22, 2021 response to your Committee's follow up questions, the Department of the Attorney General stated that it is difficult to prove that a violation of procurement laws or rules was intentional.



\$2,500 on the Hawaii Awards and Notices data system; and

- (E) Begin discussions with DLIR on whether procurement officers of public works projects with an estimated value of \$250,000 or greater can obtain the apprenticeship preference information directly from DLIR.

## V. Conclusion

Your Committee believes that the findings above provide a better understanding of procurement challenges in Hawaii and the recommendations presented is a good first step to better serve the public by identifying and maximizing efficiency in the public procurement process through clear, fair, and consistent policies and standards.

Respectfully submitted on  
behalf of the members of the  
Special Committee on State of  
Hawaii Procurement,

