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BONNIE KAHAKUI
ADMINISTRATOR

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**TESTIMONY
OF
BONNIE KAHAKUI, ADMINISTRATOR
STATE PROCUREMENT OFFICE**

**TO THE SENATE COMMITTEE
ON
GOVERNMENT OPERATIONS**
January 28, 2025, 3:00 p.m.

**SENATE BILL 462
RELATING TO PROCUREMENT CONTRACTS**

Chair McKelvey, Vice Chair Gabbard, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 462. The State Procurement Office (SPO) appreciates the intent of this bill, but comments that the addition of language to 103D-313, Hawaii Revised Statutes, is not necessary. Performance incentive contracts are already addressed in Hawaii Administrative Rules 3-122-139:

§3-122-139 Performance incentive contract. In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals, and a formula which varies the profit or the fee if the specified performance goals are exceeded or not met. For example, early completion may entitle the contractor to a bonus while later completion may entitle the State to a price decrease.
[Eff 12/15/95; comp 11/17/97; am and
comp MAR 21 2008] (Auth: HRS §§103D-202, 103D-313)
(Imp: HRS §103D-313)

Thank you for the opportunity to submit testimony on this measure.



STATE OF HAWAII
DEPARTMENT OF EDUCATION
KA 'OIHANA HO'ONA'AUAO
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Date: 01/28/2025

Time: 03:00 PM

Location: CR 225 & Videoconference

Committee: Senate Government Operations

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Bill Title: SB 0462 RELATING TO PROCUREMENT CONTRACTS.

Purpose of Bill: Requires all performance incentive contracts to specify a pricing basis, performance goals, and a formula in calculating the contractor's profit, fees, or price decrease if the specified performance goals are exceeded or not met. Allows moneys remaining in the contract budget after project completion to be divided between the State and contractor if the contractor has met or exceeded all performance goals specified in the contract.

Department's Position:

The Hawaii State Department of Education (Department) respectfully provides comments on SB 462. The Department appreciates the intent of this legislation and does not object to the bill. However, there are concerns as to the administrative costs arising from anticipated disputes on penalties and potential delays related to final acceptance of construction contracts.

The penalty provision of the proposed legislation appears to transform incentive contracts into fixed fee contracts with a higher ceiling. Contractors are already at risk of increased costs if they fail to meet their performance standards. The proposed legislation will interfere with Design-Build Institute of America best practice for design-build contracts for construction. However, the Department does not employ a large amount of incentive contracts.

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