



**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

P.O. Box 119
Honolulu, Hawaii 96810-0119
Telephone: (808) 587-4700
e-mail: state.procurement.office@hawaii.gov
<http://spo.hawaii.gov>

**TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE**

**TO THE HOUSE COMMITTEE
ON
FINANCE**

MARCH 2, 2016, 11:00 A.M.

HOUSE BILL No. 2544 HD1

RELATING TO CONSTRUCTION CONTRACTS

Chair Luke, Vice-Chair Nishimoto, and members of the committee, thank you for the opportunity to submit testimony on HB 2544 HD1. The State Procurement Office (SPO) does not oppose a comprehensive analysis and review of the Hawaii public procurement code (the Code) and federal procurement laws (particularly the Federal Acquisition Regulation (FAR)), however, the SPO will require a minimum of \$450,000 to procure for the outsourcing services to achieve this analysis.

The SPO is not in opposition of this bill, however, would like to submit comments pertaining to the language in SECTION 1, page 1, lines 6 to 17; and page 2 lines 1 to 18, to be amended and or deleted as follows:

1. The SPO requests that SECTION 1, page 1, lines 7 to 8 of the bill be deleted entirely.

Hawaii Revised Statutes (HRS) Chapter 103D, the Code, was enacted in 1993 to establish a comprehensive code that would increase competition, ensure fairness, and establish a greater uniformity in procurement for goods, services, and construction. For the purpose of this bill, the SPO recommends the tasks listed on the bill be narrowed down to focus on sections of the Code pertaining to the awarding of construction contracts so that the SPO and the Department of Accounting of General Services (DAGS) will be able to initiate and complete the study by a specified timeframe.

Additionally, Senate Concurrent Resolution 92, Senate Draft 2 of the 2013 Regular Legislation Session, requested the Comptroller to establish a Task Force to study the State procurement code and identify amendments that would increase economy, efficiency, and effectiveness, and impartiality in the procurement of public works construction projects. The Task Force's Final Report 04-14-15 was submitted to the 2015 Regular Legislation Session.

2. The SPO requests that SECTION 1, page 1, lines 9 to 10 of the bill be amended. The following amendment is provided for your consideration:

“(2) A cost-benefit analysis of the current Hawaii public procurement process **with regard to construction contracts;**”

The Code, itself, is large as it applies to all procurement contracts made by governmental bodies for goods, services, and construction. Since this bill is requesting a comprehensive analysis and review of the Code, particularly with regard to the awarding of construction contracts, the SPO recommends that the cost-benefit analysis should also be solely focused on sections of the Code pertaining to construction contracts.

3. The SPO requests that SECTION 1, page 1, lines 11 to 15 of the bill be amended. The following amendment is provided for your consideration:

“(3) A review of issues and concerns raised by ~~[businesses and the general public]~~ **the Task Force's Final Report 04-14-15 submitted to the Regular Session 2015 Legislature** regarding the Hawaii public procurement process ~~[,including issues involving delays in the procurement process, as well as delays in payment for the receipt of goods and services];~~”

The Task Force's representatives and other participating organizations consisted of representatives from State agencies as well as representatives from various construction industry organizations as one of its tasks was to solicit input from the construction industry to determine whether administrative rules governing contractors reflect the intent of the legislature and Chapter 103D, Hawaii Revised Statutes. As a result, the Task Force was able to identify the four most important construction-related procurement issues: preferences, protests, subcontractor listing, and identify and address Bad Contractors. Therefore, the SPO recommends the review focus on these four construction-related procurement issues identified by the State agencies and construction industry representatives.

4. The SPO requests that SECTION 1, page 1, lines 16 to 17; and page 2, lines 1 to 2 of the bill be amended. The following amendment is provided for your consideration:

“(4) A review of federal procurement laws, particularly the Federal Acquisition Regulation's **Chapter 36 – Construction and Architect-Engineer Contracts**, and a comparison the similarities and differences between the Hawaii public procurement code and the federal **construction** procurement laws;”

The mere exercise in cross-walking State terminology to equivalent federal terminology will be a herculean task that will be an extensive undertaking, requiring expertise, staffing, and funding resources in order to develop any new processes, procedures, templates, contract terms and conditions, and reporting requirements compliant with the Hawaii Code and the FAR. Attached for your consideration herein is FAR Part 52.301, a matrix of all FAR solicitation and contract clauses, including their alternatives and their associated instances for mandatory inclusion in solicitation and contracts.

Additionally, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the Super Circular), that applies to all States awarded federal grants, starts with the mandate that State's must follow their own procurement code when making procurements with federal money. So if this measure results in following the FAR for construction, then the State may miss out on being under this “Super Circular” and having to comply with more onerous FAR requirements.

Therefore, the SPO recommends the review of federal procurement laws be narrowed down to focus on the FAR's Chapter 36 – Construction and Architect-Engineer Contracts so that the SPO and the DAGS will be able initiate and complete the study by a specified timeframe.

5. The SPO requests that SECTION 1, page 2, lines 3 to 5 of the bill be amended. The following amendment is provided for your consideration:

“(5) An analysis of whether closer alignment of the Hawaii public procurement code to federal ~~construction~~ procurement laws would be ~~[eost]~~ beneficial to the State;”

Much of the current Hawaii Code is already aligned with the federal code, but there will be some federal code procurement requirements that are more restrictive than the current Hawaii public procurement code which may slow down the procurement process and possibly limit competition. Hawaii's construction industry, bidding on public works construction projects, will also have to expend considerable resources in seeking advice, consultation and training in order to operate in a blended Hawaii Code and FAR environment.

Additionally, the extent of developing a new set of regulations will also be immense as uniform guidance will also need to be established and imposed in order to ensure agencies and jurisdictions comply with the new uniformed procurement process to avoid inconsistent and unequal implementation across the State. By excluding public bodies from compliance with a common set of legal requirements creates an imbalance wherein the competitive environment becomes different among the different jurisdictions and the entire procurement process becomes less efficient and more costly for the State and vendors/contractors. Therefore, the SPO believes that the Code was and is still vital to good government because it establishes a fair and consistent process to award government contracts that hold agencies responsible and accountable for their actions, which results in consistency and efficiency statewide.

6. The SPO requests that SECTION 1, page 2, lines 6 to 8 of the bill be deleted entirely.

The SPO recommends this deletion as any determinations to the necessity of amending the Code to correct inefficiencies shall be in the SPO's report findings recommendations submitted to the Legislature.

7. The SPO requests that SECTION 1, page 2, lines 15 to 18 of the bill be amended. The following amendment is provided for your consideration:

“(c) The state procurement office shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of ~~[2017]~~ 2018.”

Upon receipt of the appropriated and allocated funding for the report, the SPO must first procure for the respective consulting services which will reduce the time allocation and quality of the interim report. For instance, this measure will require a detailed examination and meticulous side-by-side comparison of the Hawaii procurement environment, procurement related statutes and rules with the federal code, and the challenges thereto will need to be resolved. And any resulting recommendations to amend the Code to align with the FAR, will affect not only State agencies, but all CPO jurisdictions, who will need time to do their own assessments of the logistical requirements and anticipated costs (monetarily and culturally, taking into account governance and infrastructure) of amending the Code to align with the FAR. Therefore, the SPO recommends that the report be due in the regular session of 2018 instead.

The SPO is committed to working with State Legislature and Agencies to develop the best policy and procedures for procurement that allow for streamlining, efficiencies, innovation, cost control, and fair and equal contracting opportunities across the State of Hawaii. The SPO recognizes the benefits of certain federal procurement laws with much of the current Hawaii Code already aligned with the Federal Code. Further, the SPO intends to continue research to determine what Code (whether it be state specific or federally aligned) would best benefit our State as a whole.

The SPO requests that SECTION 1, page 1 to 2, of the bill be amended and or deleted as stated above.

Thank you.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii
GENERAL CONTRACTORS ASSOCIATION OF HAWAII
Quality People. Quality Projects.

Uploaded via Capitol Website

March 2, 2016

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR, HOUSE COMMITTEE ON FINANCE

SUBJECT: **SUPPORT OF H.B. 2544, HD1, RELATING TO CONSTRUCTION CONTRACTS.**
Requires the State Procurement Office, in conjunction with the Department of Accounting and General Services, to conduct a comprehensive analysis and review of the Hawaii Public Procurement Code, particularly with regard to the awarding of construction contracts. Appropriates an unspecified amount of funds for the analysis and review. (HB2544 HD1)

HEARING

DATE: Wednesday, March 2, 2016
TIME: 11:00 a.m.
PLACE: Conference Room 308

Dear Chair Luke and Vice Chair Nishimoto and Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred seventy general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

GCA **supports** H.B. 2544, HD1, Relating to Construction Contracts, which would require the State Procurement Office in conjunction with the Department of Accounting and General Services to conduct a comprehensive analysis and review of the Hawaii Public Procurement Code and its similarities to the federal procurement laws and regulations with regard to construction contracts. GCA has been actively working with agencies that administer public works contracts to improve the efficiency and delivery of public works along with safeguarding the funds of taxpayers.

Recent Procurement Related Legislative Initiatives

In 2013 this body initiated a Procurement Task Force pursuant to [Senate Concurrent Resolution 92 \(2013\)](#) which was tasked to study the State Procurement Code and identify amendments that would increase economy, efficiency, effectiveness and impartiality in the procurement of public works construction. The Department of Accounting and General Services recently issued the Task Force's Report on which identified four areas of concern that was addressed by participants including: Preferences, Protests, Subcontractor Listing and Identifying and Addressing Bad Contractors. In 2015 pursuant to [Act 182 \(2015\)](#) this body extended the 2013 Procurement Task Force to specifically identify and propose amendments, if any, to the procurement code affecting public works construction projects, specifically regarding statewide past performance standards and procedures. However, the Act 182 (2015) Task Force did not meet during the interim to address these issues and instead has just initiated meetings last month.

This bill's proposal to further study Hawaii's Procurement Code and conduct a comprehensive analysis and review of the Code and its correlation to the federal procurement laws and regulations will be a good continuation of the discussion in order to address ways to improve its efficiency of public works construction. GCA supports the State Procurement Office's study and it will ensure that all parties input will be gathered in a fair and proper process. It will be important for the State Procurement Office to gather input directly from the departments and agencies administering public works construction to identify areas of improvement and concern.

We respectfully request the Committee pass this measure. Thank you for the opportunity to share our support of H.B. 2544, HD1.

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 ♦ Fax: (808) 533-2739

March 2, 2016

Testimony To: House Committee on Finance
Representative Sylvia Luke, Chair

Presented By: Tim Lyons, President

Subject: H.B. 2544, HD 1 - RELATING TO CONSTRUCTION CONTRACTS

Chair Luke and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we offer some comments on this bill. The SAH represents the following nine separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

We would like this Committee to note that most of our contractors have stated that they do not participate in federal procurement jobs. The prime reason that they cite is the lack of a subcontractor listing clause. We have not however had an opportunity to discuss with them if there are some favorable parts of the federal procurement process thus giving us a reason to endorse the concept of federal procurement laws being embodied in state law. We will attempt to do that as the process goes on.

Based on the above, we will look further at the federal process.

Thank you.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Finance
Wednesday, March 2, 2016 at 11:00 A.M.
Conference Room 308, State Capitol**

RE: HOUSE BILL 2544 HD 1 RELATING TO PROCUREMENT

Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 2544 HD 1, which requires the State Procurement Office, in conjunction with the Department of Accounting and General Services, to conduct a comprehensive analysis and review of the Hawaii Public Procurement Code, particularly with regard to the awarding of construction contracts. Appropriates an unspecified amount of funds for the analysis and review.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

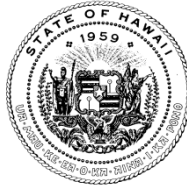
The procurement process is in need of improvement. Business and the public want an open, competitive and transparent procurement process. The procurement process must also be timely in the selection and payment for goods and services. In addition, the State is looking for the best value, not necessarily the lowest price.

We know of many small businesses in Hawaii that do not pursue work from the State of Hawaii because of the uncertainty and delays caused by the current procurement process.

We respectfully suggest that the proposed amendment include not only construction contracts but also contracts for planning and design services be issued pursuant to federal procurement laws. We support the proposed bill with our proposed amendments to include planning and design services with construction contracts.

We appreciate the opportunity to express our support for H.B. 2544 HD 1.

Thank you for the opportunity to testify.



Testimony by:
FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

LATE

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 2, 2016
11:00 a.m.
State Capitol, Room 308

H.B. 2544, H.D. 1
RELATING TO PROCUREMENT

House Committee on Finance

The Department of Transportation (DOT) **supports** bill H.B. 2544, H.D. 1 that proposes to require the State Procurement Office, and the Department of Accounting and General Services, to conduct a comprehensive analysis and review of the Hawaii Public Procurement Code, particularly with regard to the awarding of construction contracts.

An analysis of construction procurement within the existing Procurement Code is consistent with the interests underlying the Procurement Code. The interests underlying the Procurement Code can be found at HRS § 103D-101(a). The DOT is to, "[a]ct only in the public interest¹... [i]dentify and maximize efficiencies in the public procurement process² ...[e]ncourage economic competition by (A) Ensuring that all persons are afforded an equal opportunity to compete in a fair and open environment; and (B) Researching innovative goods and services to meet the public's needs..."³

The current Procurement Code provides the foundational framework for construction contracting. A paradigm for which both contractors and the procuring agency can rely on to be consistent in its application. However, providing a comprehensive assessment on its efficiency and whether it still hits the mark with the legislative purpose as our purchasing needs have evolved is important to ensure that the construction playing field is in fact a level playing field.

Thank you for the opportunity to provide testimony.

¹ HRS § 103D-101(a)(3).

² HRS § 103D-101(a)(5).

³ HRS § 103D-101(a)(6).