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

**TO THE SENATE COMMITTEE
ON
GOVERNMENT OPERATIONS**

February 4, 2016, 1:15PM

**Senate Bill 2499
RELATING TO CONSTRUCTION CONTRACTS**

Chair Kim, Vice-Chair Ihara, and members of the committee, thank you for the opportunity to submit testimony on SB 2499. The State Procurement Office (SPO) opposes this measure.

The Hawaii Public Procurement Code (Code) is the 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.

One of public procurement's primary objectives is to provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion, or fraud in awarding of contracts. Another critical objective is to ensure disclosure and public visibility into the way tax-payer dollars are being spent. As such, along with open competition, the Code provides safeguards to ensure procurement integrity, determination of fair and reasonable pricing, public notice, transparency, and a clear due process mechanism for aggrieved bidders. The Code also provides consistency in the manner in which purchasing agencies procure goods, services, and construction.

The proposed amendments and repeals in this bill mean that all procurements made with taxpayer monies will not have the same oversight, accountability, and transparency requirements mandated by those procurements processes provided in the Code. It also means adhering to the Code's procurement integrity laws will not be required.

This measure, and the Federal Acquisition Regulation (FAR) itself, will not be self-executing and will require, and result in, an entire overhaul of public works construction procurement practices, procedures, and industry in Hawaii. Implementation of the proposed amendments by agencies and jurisdictions will be an extensive, statewide undertaking, requiring expertise, staffing, training, and funding resources. Since this measure exempts these procurements from the procurement code and makes no provision for uniform, statewide implementation, the onus will fall on each agency and jurisdiction conducting construction to develop processes, procedures, templates, contract terms and conditions, and reporting requirements compliant with the FAR.

For instance, agencies and jurisdictions will be required to conduct a detailed examination and meticulous side-by-side comparisons of the Hawaii procurement environment, procurement related statutes and rules with the federal code, and the challenges thereto will need to be resolved. The mere exercise in cross-walking State terminology to equivalent federal terminology will be a herculean task. And, with no unifying oversight, each agency may interpret and “crosswalk” terms differently. For example, finding State terms equivalent to federal “contracting officers”, “senior contracting officials”, “administrative contracting officers,” “Chief Acquisition Officers,” including the procurement authority associated with each under FAR will be daunting.

Agencies and jurisdictions must make an assessment of the logistical requirements and anticipated costs (monetarily and culturally, taking into account governance and infrastructure) of rewriting the Hawaii Code to adapt to the Federal Code. This must be seriously considered as adaptation not only affects State agencies, but all Chief Procurement Officer (CPO) Jurisdictions.

The SPO respectfully notes the following impacts regarding the reality of a wholesale replacement of the procurement code in HRS 103D for our Agencies’ construction contracts as well as our construction industry who bid on public works contracts:

1. The measure states it will become effective upon its approval. On day one, all upcoming and open construction solicitations and projects will come to a halt. Each of those solicitations must be reviewed and revised in accordance with the requirements for equivalent solicitations under FAR. Each will need to include applicable FAR terms and conditions mandated by each FAR chapter and memorialized in FAR Part 52, Solicitation Provisions and Contract Clauses. 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 solicitations and contracts.
2. There will be some federal code procurement requirements that are more restrictive than the current State procurement code which may slow down the procurement process and possibly limit competition. SPO has particular concern for agencies who perform state public works contracts and construction projects subject to federal grant funding. Based on this measure, those unfortunate agencies will be required to comply with the FAR for state projects but for projects subject to federal funds they will be required to follow their granting agencies associated OMB circular or the new Uniform Administrative Requirements, which are not as onerous as FAR.

The National Association of State Procurement Officials state: “Businesses suffer when there is inconsistency in procurement laws and regulations. Complex, arcane procurement rules of numerous jurisdictions discourage competition by raising the costs to businesses to understand and comply with these different rules. Higher costs are recovered through the prices offered by a smaller pool of competitors, resulting in unnecessarily inflated costs to state and local governments.”

In addition, 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 there is no provision in State law for construction other than to follow the FAR, then the State may miss out on being under this “Super Circular” and having to comply with the more onerous FAR requirements if there is no State established procurement system in place.

3. The extent of the transition from one set of regulations to a new set will be immense for the departments and state jurisdictions to implement and manage. The effects will be seen in increased funding request, change management, infrastructure requirements and training.

Much of the current State code is already aligned with the federal code, but uniform guidance will need to be established and imposed in order to ensure agencies comply with the FAR in a consistent manner. Since no agency will be administering this new paradigm SPO envisions disparate, inconsistent and unequal implementation across the state. In addition, a public body will no longer achieve the benefits of aggregation by using another public body's contract because different state laws and regulations may apply to the various public bodies making compliance more difficult.

4. With Hawaii being one of the most decentralized States when it comes to procurement, a major concern will be to provide adequate training to personnel not familiar with the FAR, a much more complex regulation and standards to comprehend. The contracting officers and procurement specialists conducting procurements under the FAR are a highly trained and skilled workforce. Federal agencies invest millions in sending their acquisition professionals to FAR-specific training developed and conducted by experts in the field of federal acquisition. These FAR acquisition professionals progress professionally based on their level of training and associated certifications. This level of training is required for such a daunting federal code to ensure the basic goals of all government procurement are met.
5. The FAR requires large amounts of reporting and metrics. While these are goals that the State intends to ultimately reach over time, the immediate requirement will burden the current infrastructure, require a large dollar funding, additional civil service staffing, staff reorganizations, increased salary requirements, and the development of multiple procurement databases that will manage federal requirements such as past performance, small business administration, source selection, and vendor coding.
6. Based on the proposed amendments and repeals of this bill, the SPO will have no role to play and will not be responsible for implementation or compliance with the FAR. As a result, it will fall solely to Agencies to implement the proposed amendments and determine how to comply with the FAR, which may take up to at least a year at the Agency level. During that interim SPO predicts little to no construction solicitations will be issued due to agency inability to transition to a FAR paradigm in a timely manner. As a result, new solicitations and contracts will come to a halt because all of the above requirements need to happen before a new code can be implemented, which is not in the best interest of the government, the business and construction industries, and the general public.
7. Section 2, Page 8, Para (6) states that construction will not be part of the procurement code, except for any construction procured pursuant to Chapter 43F or standards provided by law, or made by the counties. This means that State Agencies will have to be versed in two different sets of procurement regulations that is State as well as Federal. They would need to keep two separate sets of books, trainings, code updates, required reporting, and contract file and monitoring requirements, and will undoubtedly have to double their resources or be facing a large additional burden to their time, budget and resources.
8. The effect this measure will have on Hawaii's construction industry bidding on public works construction projects cannot be underestimated. As stated above, the Hawaii public procurement code already broadly conforms with federal procurement law. But, it can be argued that the Hawaii code is not as onerous or as complex as FAR requirements. As such, Hawaii contractor's will also have to expend considerable resources in seeking advice, consultation and training in order to operate in this a complicated FAR environment.

The SPO respectfully notes the following observations and impacts in regards to the reality of a total replacement of the procurement code in HRS 103D for construction contracts overall:

1. Training and governance will include FAR training with higher-level certification requirements, a help desk; changes to various other Hawaii statutes (such as the Labor and Construction statutes), Rules and County Charters referencing the new Code; and the creation of new policy, directives, and circulars to provide guidance.
2. An in-depth, long-term change management plan will need to be developed and implemented over this period as the State moves over to the federal code. Additional funds for outsourcing to subject matter experts will be required since agencies may not have skilled resources in-house to effectuate this change.
3. With the implementation of the FAR, agencies/jurisdictions will need to implement a new protest process as the measure would effectively eliminate Part VII of HRS Chapter 103D governing procurement protests for construction. As stated above, the FAR will not be self-executing and the exemption from the procurement code effectively imposes on aggrieved parties the requirement to appeal to the Federal Government Accounting Office (GAO). This is an unclear protest process for aggrieved parties that would involve the procuring agency and, at least in the federal system, the Government Accounting Office to take jurisdiction over these cases. Extensive coordination and advice will be required from the Attorney General's office concerning whether the GAO would even have jurisdiction over or accept these cases.

The Code already offers a legal and contractual remedy process to resolve protested solicitations and awards, to provide fairness and consistency, and due process for vendors/contractors, which includes impartial reviews by the Department of Commerce and Consumer Affairs (DCCA) Office of Administrative Hearings (OAH) process and the ability to request judicial review. The current protest process also protects agencies and taxpayers from onerous and baseless protests, minimizes delays and disruptions in the award of contracts, and supports a prompt resolution.

For instance, the 2012 Legislature imposed a strict 45 day time limit and requirements of a minimum amount in controversy and a protest bond, which has resulted in fewer protests and the protests received have been limited to major issues, which are promptly resolved once they get to OAH. Federalism and state due process requires Hawaii provide a realistic and reasonable avenue for protest.

4. By replacing the Code, in order to ensure a prospective offeror has the financial ability, resources, skills, capability, and business integrity necessary to perform the work, agencies/jurisdictions will need to implement new procedures to verify the prospective offeror is in compliance with all applicable state laws.

For instance, to ensure all vendors/contractors who seek public contracts compete on equal footing they are required to demonstrate compliance with Hawaii laws. The Code requires potential vendors/contractors comply with Hawaii laws prior to award of a contract, i.e. DOTAX Tax Clearance Certificate including IRS certification, DLIR Certificate of Compliance; DCCA Certificate of Good Standing; or Hawaii Compliance Express (HCE) Certificate of Vendor Compliance. Upon completion of goods delivered, services performed, or construction completion, and before final payment is made, a vendor/contractor is again required to demonstrate compliance with Hawaii laws, thereby assuring that public funds are paid to compliant vendors/contractors. This measure effectively removes all of these requirements for construction contracts thus removing the key elements utilized by agencies to aid in making contractor responsibility determinations.

5. In order to ensure the replacement to federal code would stand, the Hawaii Legislature would need to commit to exclude themselves from submitting any future procurement code changes related to construction as this would morph the Code back into a customized code specific to Hawaii, diminishing the original intent to follow the federal code and, in fact, federalism itself.

For instance, the Code enables the legislature to impose specific requirements to eliminate practices that are detrimental to the public's perception of government procurement. The legislature passed and the governor signed into law, Act 52 (2003), amending section 103D-304, HRS, to require that all contract awards to professional service providers be made based upon the merits of the provider, and not upon any other factors; thereby reaffirming the public's understanding that professional service contracts are not awarded to companies based on political affiliation or amount of political contributions. Ironically, Hawaii adopted these changes to better align itself with federal law in the area of professional design services procurements. The Code also enables legislature to promote specific segments of the State's economy and encourage the development of new products and technologies through preferences allowed by the Code. However, preference programs apply only to agencies subject to the Code, and exempt agencies are not subject to the legislature's designated preferences.

The bill repeals State procurement code 103D for construction contracts, however, there is no reason and/or justification given to substantiate or explain what is prompting the Legislature to take such drastic action. As a result, for SPO, it was difficult to submit testimony other than "opposition," as the intent or the goal of this bill is elusive. Therefore, the successful achievement of a fully-fledged federal code implementation across the State upon approval of this bill is extremely remote.

Each year new procurement laws are applied to state agencies causing state agency contracts to become more complex and costly. 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. Those who lack a working knowledge of the Code, may view it as a cumbersome process, while the SPO believes that it is vital to good government to have a fair and consistent process to award government contracts that hold agencies responsible and accountable for their actions.

Thank you.

52.301 Solicitation provisions and contract clauses (Matrix).

52.301 Solicitation provisions and contract clauses (Matrix).

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Key:			
Type of Contract:			
P or C	= Provision or Clause	DDR	= Dismantling, Demolition, or Removal of Improvements
IBR	= Is Incorporation by Reference Authorized? (See FAR 52.102)	A&E	= Architect-Engineering
UCF	= Uniform Contract Format Section, when Applicable	FAC	= Facilities
FP SUP	= Fixed-Price Supply	IND DEL	= Indefinite Delivery
CR SUP	= Cost-Reimbursement Supply	TRN	= Transportation
FP R&D	= Fixed-Price Research & Development	SAP	= Simplified Acquisition Procedures (excluding micro-purchase)
CR R&D	= Cost Reimbursement Research & Development	UTL SVC	= Utility Services
FP SVC	= Fixed-Price Service	CI	= Commercial Items
CR SVC	= Cost Reimbursement Service		
FP CON	= Fixed-Price Construction	Contract Purpose:	
CR CON	= Cost Reimbursement Construction	R	= Required
T&M LH	= Time & Material/Labor Hours	A	= Required when Applicable
LMV	= Leasing of Motor Vehicles	O	= Optional
COM SVC	= Communication Services	✓	= Revision

PROVISION OR CLAUSE	PRESCRIBED IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																						
		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DOR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
52.202-1 Definitions.	2.201	C	Yes	I	R	R	A	R	R	R		R	R	R	R	R		R	R	R	R		R	
52.203-2 Certificate of Independent Price Determination.	3.103-1	P	No	K	A		A		A		A				A	A	A	A	A	A		A		
52.203-3 Gratuities.	3.202	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.203-5 Covenant Against Contingent Fees.	3.404	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R		
52.203-6 Restrictions on Subcontractor Sales to the Government.	3.503-2	C	Yes	I	R	R			R	R									R			R		
Alternate I	3.503-2	C	Yes																				R	
52.203-7 Anti-Kickback Procedures.	3.502-3	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R		
52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.	3.104-9(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.203-10 Price or Fee Adjustment for Illegal or Improper Activity.	3.104-9(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.	3.808(a)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.203-12 Limitation on Payments to Influence Certain Federal Transactions.	3.808(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.203-13 Contractor Code of Business Ethics and Conduct.	3.1004(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.203-14 Display of Hotline Poster(s).	3.1004(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009.	3.907-7	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A	
52.203-16 Preventing Personal Conflicts of Interest.	3.1106	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A	
52.203-17 Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights.	3.908-9	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R		
52.204-1 Approval of Contract.	4.103	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.204-2 Security Requirements.	4.404(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
Alternate I	4.404(b)	C	Yes	I					A															
Alternate II	4.404(c)	C	Yes	I							A	A						A	A					
52.204-3 Taxpayer Identification.	4.905	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.204-4 Printed or Copied Double-Sided on Postconsumer Fiber Content Paper.	4.303	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.204-5 Women-Owned Business (Other Than Small Business)	4.607(b)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.204-6 Data Universal Numbering System Number.	4.607(b)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A	
52.204-7 System for Award Management.	4.1105(a)(1)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A	
Alternate I	4.1105(a)(2)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A	
52.204-8 Annual Representations and Certifications	4.1202	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.204-9 Personal Identity Verification of Contractor Personnel.	4.1303	C	Yes	I	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A		A	A	
52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards.	4.1403(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A	
52.204-11 [Reserved]																								
52.204-12 Data Universal Numbering System Number Maintenance.	4.607(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A	
52.204-13 System for Award Management Maintenance.	4.1105(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A	
52.204-14 Service Contract Reporting Requirements.	4.1705(a)	C	Yes						A	A	A	A	A		A	A	A	A				A		
52.204-15 Service Contract Reporting Requirements for Indefinite-Delivery Contracts.	4.1705(b)	C	Yes						A	A	A	A	A		A	A	A	A	A				A	
52.204-16 Commercial and Government Entity Code Reporting.	4.1804(a)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A	
52.204-17 Ownership or Control of Offeror.	4.1804(b)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A	
52.204-18 Commercial and Government Entity Code Maintenance.	4.1804(c)	C	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A	

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52.204-19 Incorporation by Reference of Representations and Certifications.	4.1202(b)	C	Yes	K	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.207-1 Notice of Standard Competition.	7.305(a)	P	Yes	L	A		A		A		A		A	A	A	A					A		A				
52.207-2 Notice of Streamlined Competition.	7.305(b)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.207-3 Right of First Refusal of Employment.	7.305(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.207-4 Economic Purchase Quantity—Supplies.	7.203	P	No	K	A	A																		A	A	A	
52.207-5 Option to Purchase Equipment.	7.404	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.208-4 Vehicle Lease Payments.	8.1104(a)	C	Yes	I																					A		
52.208-5 Condition of Leased Vehicles.	8.1104(b)	C	Yes	I																					A		
52.208-6 Marking of Leased Vehicles.	8.1104(c)	C	Yes	I																					A		
52.208-7 Tagging of Leased Vehicles.	8.1104(d)	C	Yes	I																					A		
52.208-8 Required Sources for Helium and Helium Usage Data.	8.505	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.208-9 Contractor Use of Mandatory Sources of Supply or Services.	8.005	C	Yes	I	A	A																		A	A		
52.209-1 Qualification Requirements.	8.206-2	C	No	I	A	A																		A	A		
52.209-2 Prohibition on Contracting with Inverted Domestic Corporations—Representation.	9.108-5(a)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.209-3 First Article Approval—Contractor Testing.	9.308-1(a)(1) and (b)(1)	C	Yes	I	A	O																		A	A		
Alternate I	9.308-1(a)(2) and (b)(2)	C	Yes	I	A	O																		A	A		
Alternate II	9.308-2(a)(3) and (b)(3)	C	Yes	I	A	O																		A	A		
52.209-4 First Article Approval—Government Testing.	9.308-2(a)(1) and (b)(1)	C	Yes	I	A	O																		A	A		
Alternate I	9.308-2(a)(1) and (b)(2)	C	Yes	I	A	O																		A	A		
Alternate II	9.308-2(a)(1) and (b)(3)	C	Yes	I	A	O																		A	A		
52.209-5 Certification Regarding Responsibility Matters.	9.104-7(a)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.	9.409	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.209-7 Information Regarding Responsibility Matters.	9.104-7(b)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.209-8 Updates of Publicly Available Information Regarding Responsibility Matters.	9.104-7(c)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.209-10 Prohibition on Contracting with Inverted Domestic Corporations.	9.108-5(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.210-1 Market Research.	10.003	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.211-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29.	11.204(a)	P	No	L	A	A	A	A	A	A	A													A	A	A	
52.211-2 Availability of Specifications, Standards, and Data Item Descriptions Listed in the Acquisition Streamlining and Standardization Information System (ASSIST).	11.204(b)	P	No	L	A	A	A	A	A	A	A													A	A	A	
52.211-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.	11.204(c)	P	No	L	A	A	A	A	A	A	A													A	A	A	
52.211-4 Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Index Descriptions.	11.204(d)	P	No	L	A	A	A	A	A	A	A													A	A	A	A
52.211-5 Material Requirements.	11.304	C	Yes	I	R	R																			A		
52.211-6 Brand Name or Equal.	11.107(a)	P	Yes	L	A	A																			A	A	
52.211-7 Alternatives to Government-Unique Standards.	11.107(b)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.211-8 Time of Delivery.	11.404(a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate I	11.404(a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate II	11.404(a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate III	11.404(a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.211-9 Desired and Required Time of Delivery.	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate I	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate II	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate III	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.211-10 Commencement, Prosecution, and Completion of Work.	11.404(b)	C	Yes																								
Alternate I	11.404(b)	C	Yes																								
52.211-11 Liquidated Damages—Supplies, Services, or Research and Development.	11.503(a)	C	Yes	I	O																				O	O	
52.211-12 Liquidated Damages—Construction.	11.503(b)	C	Yes																							O	
52.211-13 Time Extensions.	11.503(c)	C	Yes																						A		
52.211-14 Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use.	11.604(a)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.211-15 Defense Priority and Allocation Requirements.	11.604(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.211-16 Variation in Quantity.	11.703(a)	C	Yes	F	A																				A	A	A
52.211-17 Delivery of Excess Quantities.	11.703(b)	C	Yes	F	O																				O	O	
52.211-18 Variation in Estimated Quantity.	11.703(c)	C	Yes																						A		

52.301 Solicitation provisions and contract clauses (Matrix).

52.212-1 Instructions to Offerors—Commercial Items.	12.301(b)(1)	P	Yes	NA	A		A		A		A		A	A	A	A	A	A	A	A	A	R
52.212-2 Evaluation—Commercial Items.	12.301(c)(1)	P	No	NA	O		O		O		O		O	O	O	O	O	O	O	O	O	O
52.212-3 Offeror Representations and Certifications—Commercial Items.	12.301(b)(2)	P	No	NA	A		A		A		A		A	A	A	A	A	A	A	A	A	R
Alternate I	12.301(b)(2)	P	No	NA	A		A		A		A		A	A	A	A	A	A	A	A	A	A
Alternate II	12.301(b)(2)	P	No	NA	A		A		A		A		A	A	A	A	A	A	A	A	A	A
52.212-4 Contract Terms and Conditions—Commercial Items.	12.301(b)(3)	C	Yes	NA	A		A		A		A		A	A	A	A	A	A	A	A	A	R
Alternate I	12.301(b)(3)	C	Yes	NA									A									A
52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders— Commercial Items	12.301(b)(4)	C	No	NA	A		A		A		A		A	A	A	A	A	A	A	A	A	R
Alternate I	12.301(b)(4)(i)	C	No	NA	A		A		A		A		A	A	A	A	A	A	A	A	A	R
Alternate II	12.301(b)(4)(ii)	C	No	NA	A		A		A		A		A	A	A	A	A	A	A	A	A	R
52.213-1 Fast Payment Procedure.	13.404	C	Yes	A									A					A		A		
52.213-2 Invoices.	13.302-5(b)	C	Yes																	A		
52.213-3 Notice to Supplier.	13.302-5(c)	C	Yes																	A		
52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).	13.302-5(d)	C	Yes																	A		
52.214-3 Amendments to Invitations for Bids.	14.201-6(b)(1)	P	Yes	L	A				A		A		A	A	A			A	A		A	
52.214-4 False Statements in Bids.	14.201-6(b)(2)	P	Yes	L	A				A		A		A	A	A			A	A		A	
52.214-5 Submission of Bids.	14.201-6(c)(1)	P	Yes	L	A				A		A		A	A	A			A	A		A	
52.214-6 Explanation to Prospective Bidders.	14.201-6(c)(2)	P	Yes	L	A				A		A		A	A	A			A	A		A	
52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.	14.201-6(c)(3)	P	Yes	L	A				A		A		A	A	A			A	A		A	
52.214-10 Contract Award—Sealed Bidding.	14.201-6(e)	P	Yes	L	A				A		A		A	A	A			A	A		A	
52.214-12 Preparation of Bids.	14.201-6(f)	P	Yes	L	A				A				A	A	A			A	A		A	
52.214-13 Telegraphic Bids.	14.201-6(g)(1)	P	Yes	L	A				A		A		A	A	A			A	A		A	
Alternate I	14.201-6(g)(2)	P	Yes	L	A																A	
52.214-14 Place of Performance—Sealed Bidding.	14.201-6(h)	P	No	K	A				A				A	A	A			A	A		A	
52.214-15 Period for Acceptance of Bids.	14.201-6(i)	P	Yes	L	A				A				A	A	A			A	A		A	
52.214-16 Minimum Bid Acceptance Period.	14.201-6(j)	P	No	K	A				A				A	A	A			A	A		A	
52.214-18 Preparation of Bids—Construction.	14.201-6(l)	P	Yes								A											
52.214-19 Contract Award—Sealed Bidding—Construction.	14.201-6(m)	P	Yes								A					A						
52.214-20 Bid Samples.	14.201-6(o)(1)	P	Yes	L	A				A				A					A				
Alternate I	14.201-6(o)(2)(i)	P	Yes	L	A				A				A					A				
Alternate II	14.201-6(o)(2)(ii)	P	Yes	L	A				A				A					A				
52.214-21 Descriptive Literature.	14.201-6(p)(1)	P	Yes	L	A				A				A					A				
Alternate I	14.201-6(p)(2)	P	No	L	A				A				A					A				
52.214-22 Evaluation of Bids for Multiple Awards.	14.201-6(q)	P	Yes	M	A				A		A		A	A	A			A	A			
52.214-23 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.	14.201-6(r)	P	Yes	L	A		A		A		A		A	A	A			A				
52.214-24 Multiple Technical Proposals.	14.201-6(s)	P	Yes	M	A		A		A		A		A					A				
52.214-25 Step Two of Two-Step Sealed Bidding.	14.201-6(t)	P	Yes	L	A				A		A		A	A	A							
52.214-26 Audit and Records—Sealed Bidding.	14.201-7(a)(1)	C	Yes	I	A				A		A		A	A	A			A	A			
Alternate I	14.201-7(a)(2)	C	Yes	I	A		A		A		A		A	A	A			A	A			
52.214-27 Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding.	14.201-7(b)(1)	C	Yes	I	A				A		A		A	A	A			A	A			
52.214-28 Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding.	14.201-7(c)(1)	C	Yes	I	A				A		A		A	A	A			A	A			
52.214-29 Order of Precedence—Sealed Bidding.	14.201-7(d)	C	Yes	I	A				A		A		A	A	A			A	A			
52.214-31 Facsimile Bids.	14.201-6(v)	P	Yes	L	A				A				A	A	A			A	A		A	
52.214-34 Submission of Offers in the English Language.	14.201-6(w)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.214-35 Submission of Offers in U.S. Currency.	14.201-6(x)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.215-1 Instructions to Offerors—Competitive.	15.209(a)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A			A	A	A	A	A
Alternate I	15.209(a)(1)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A			A	A	A	A	A
Alternate II	15.209(a)(2)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A			A	A	A	A	A
52.215-2 Audit and Records—Negotiation.	15.209(b)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A			A	A		
Alternate I	15.209(b)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A			A	A		
Alternate II	15.209(b)(3)	C	Yes	I		A		A		A		A										
Alternate III	15.209(b)(4)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.215-3 Request for Information or Solicitation for Planning Purposes.	15.209(c)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.215-5 Facsimile Proposals.	15.209(e)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.215-6 Place of Performance.	15.209(f)	P	No	K	A	A	A	A	A	A	A	A	A	A	A			A	A	A		
52.215-8 Order of Precedence—Uniform Contract Format.	15.209(h)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A			A	A	A	A	A
52.215-9 Changes or Additions to Make-or-Buy Program.	15.408(a)	C	Yes	I	A	A	A	A	A	A			A	A	A	A	A	A	A	A	A	A
Alternate I	15.408(a)(1)	C	Yes	I	A	A	A	A	A	A												

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52-228-8	Liability and Insurance—Leased Motor Vehicles.	28.312	C	Yes	I										R							A	
52-228-9	Cargo Insurance.	28.313(a)	C	Yes	I																	A	A
52-228-10	Vehicular and General Public Liability Insurance.	28.313(b)	C	Yes	I																	A	
52-228-11	Pledges of Assets.	28.203-6	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52-228-12	Prospective Subcontractor Requests for Bonds.	28.106-4(b)	C	Yes	I							A	A	A					A				
52-228-13	Alternative Payment Protections.	28.102-3(b)	C	Yes	I							A	A	A					A				
52-228-14	Irrevocable Letter of Credit.	28.204-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52-228-15	Performance and Payment Bonds—Construction.	28.102-3(a)	C	Yes	I							A	A						A				
52-228-16	Performance and Payment Bonds—Other Than Construction.	28.103-4	C	No	I	A	A	A	A	A	A				A	A	A		A	A	A	A	A
	Alternate I	28.103-4	C	No	I	A	A	A	A	A	A				A	A	A		A	A	A	A	A
52-229-1	State and Local Taxes.	29.401-1	C	Yes	I																	A	
52-229-2	North Carolina State and Local Sales and Use Tax.	29.401-2	C	Yes	I							A	A										
	Alternate I	29.401-2	C	Yes	I							A	A										
52-229-3	Federal, State, and Local Taxes.	29.401-3	C	Yes	I	A			A	A	A			A	A	A	A	A	A	A	A	A	A
52-229-4	Federal, State, and Local Taxes (State and Local Adjustments).	29.401-3	C	Yes	I	A			A	A	A			A	A	A	A	A	A	A	A	A	A
52-229-6	Taxes—Foreign Fixed-Price Contracts.	29.402-1(a)	C	Yes	I	A			A	A	A			A	A	A	A	A	A	A	A	A	
52-229-7	Taxes—Fixed-Price Contracts with Foreign Governments.	29.402-1(b)	C	Yes	I	A			A		A			A	A	A	A	A	A	A	A	A	A
52-229-8	Taxes—Foreign Cost-Reimbursement Contracts.	29.402-2(a)	C	Yes	I			A		A	A			A		A	A	A	A	A	A	A	
52-229-9	Taxes—Cost-Reimbursement Contracts with Foreign Governments.	29.402-2(b)	C	Yes	I			A		A				A		A	A	A	A	A	A	A	
52-229-10	State of New Mexico Gross Receipts and Compensating Tax.	29.401-4(b)	C	Yes	I			A		A				A	A	A	A	A	A	A	A	A	
52-230-1	Cost Accounting Standards Notices and Certification.	30.201-3	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
	Alternate I	30.201-3(b)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52-230-2	Cost Accounting Standards.	30.201-4(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52-230-3	Disclosure and Consistency in Cost Accounting Practices.	30.201-4(b)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52-230-4	Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.	30.201-4(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52-230-5	Cost Accounting Standards—Educational Institution.	30.201-4(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52-230-6	Administration of Cost Accounting Standards.	30.201-4(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52-230-7	Proposal Disclosure—Cost Accounting Practice Changes.	30.201-3(c)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52-232-1	Payments.	32.111(a)(1)	C	Yes	I	R					R						A					A	A</

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52 247-8	Estimated Weights or Quantities Not Guaranteed.	47.207-3(e)(2)	C	Yes	I																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																		
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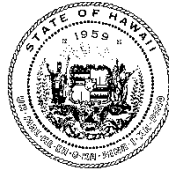
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[illegible]

52.301 Solicitation provisions and contract clauses (Matrix).

Note 1: The following clauses are prescribed for use in letter contracts:	
52.216-23, Execution and Commencement of Work.	52.216-26, Payments of Allowable Costs Before Definitization.
52.216-24, Limitation of Government Liability.	52.232-16, Progress Payments, Alternate II.
52.216-25, Contract Definitization.	52.244-2, Subcontracts.
52.216-25, Contract Definitization, Alternate I.	
Further instructions concerning provisions and clauses for letter contracts are set forth in 16.603-4(a).	
Note 2: The following clauses are prescribed for use in Small Business Administration 8(a) contracts:	
52.219-11, Special 8(a) Contract Conditions.	52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns.
52.219-12, Special 8(a) Subcontract Conditions.	52.219-18, Alternate I
52.219-14, Limitations on Subcontracting.	52.219-18, Alternate II
52.219-17, Section 8(a) Award.	
Note 3: FAR provisions and clauses not identified on the matrix may be used in contracts for commercial items consistent with the procedures and limitations in FAR 12.302	
Note 4: The following clause is prescribed for use in Information Technology Management Reform Act (ITMRA) contracts: 52.239-1, Privacy or Security Safeguards, "A".	
<div><div>< PREV</div><div>NEXT ></div></div>	

8DAVID Y. IGE
GOVERNOR



DOUGLAS MURDOCK
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
DOUGLAS MURDOCK, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE
ON
GOVERNMENT OPERATIONS
ON
FEBRUARY 4, 2016

S.B. 2499

RELATING TO CONSTRUCTION CONTRACTS

Chair Kim and members of the Committee, thank you for the opportunity to submit written testimony on S.B. 2499.

The Department of Accounting and General Services (DAGS) opposes this measure and offers alternative solutions. As a first and preferred alternative, we recommend allowing the state Procurement Policy Board the opportunity to review and recommend new state administrative rule based on the Model State Procurement Code on Infrastructure Procurement and/or select portions of the Federal Acquisition Regulation (FAR). As a second alternative, we recommend you defer the effective date to July of 2018 to give state agencies time train and prepare for a FAR-based system, while also allowing the Procurement Policy Board to exempt state agencies from certain requirements of the FAR.

Prior to my current position, I served in the Air Force for 25 years and regularly worked on federal procurement issues. In my last assignment, I was the Staff Judge Advocate (chief legal counsel) to Electronic Systems Command, which had a procurement portfolio of over five

billion dollars in contracts. More recently, I have experience working in the state procurement system and have twice served on the Hawaii Procurement Policy Board.

The FAR is excellent, but it exists in an environment very different from the state. It is part of bigger system that includes a substantial governance and support system. Using the FAR for state public works would essentially be operating the FAR in a vacuum. It would be like having a race car without wheels and a driver.

In addition, abruptly subjecting public works procurement to the FAR will create chaos and may delay new public works projects for years. The current state system, however imperfect, works because of the experience and dedication of state employees and contractors. Changing the system without time for change management will result in confusion for both State agencies and for the contractors who participate in our State construction programs. It would open the door for increased protests, and fewer projects would be awarded for the benefit of State facility users and the public.

The FAR allows for modifications through the FAR Council process and for supplementation by using agencies. Before implementing a FAR-based system, the state must take the time to consider what modifications, supplements and resources are needed to allow it to run effectively.

DAGS recommends that more careful review and development of the purpose, the goals, the impacts, and the implementation plan be completed prior to sweeping reform. Not all federal requirements are readily adaptable nor applicable to State procurement. A comparative study of the pro's and con's between the State vs. Federal procurement codes, along with development of an implementation plan that includes guidelines and training would allow for the realization of a more effective new code that incorporates the best of both programs.

Thank you for the opportunity to submit written testimony on this matter.



DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

**TO THE SENATE COMMITTEE ON
GOVERNMENT OPERATIONS**

**TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2016**

Date: Thursday, February 4, 2016

Time: 1:15 p.m.

Conference Room: 414

**TESTIMONY FOR HEARING ON SENATE BILL NO. 2499
RELATING TO CONSTRUCTION CONTRACTS**

**TO THE HONORABLE DONNA MERCADO KIM, CHAIR,
AND THE HONORABLE LES IHARA, JR., VICE CHAIR,
AND MEMBERS OF THE COMMITTEE**

The Office of Administrative Hearings ("OAH") of the Department of Commerce and Consumer Affairs ("DCCA") appreciates the opportunity to offer comments on S.B. No. 2499, Relating to Construction Contracts. My name is David Karlen, and I am the Senior Hearings Officer of the OAH.

OAH and DCCA has strong concerns with the portions of the bill that would eliminate the procurement protest provisions of Part VII of Chapter 103D, Hawaii Revised Statutes ("Procurement Code").

As background, the OAH has administered hearings on procurement protests since the Procurement Code was established in 1993. Given its experience in this area,

the OAH believes the current law, following its amendment by Act 173, Session Laws of Hawaii 2012, has substantially streamlined and strengthened the procurement protest process. For example, OAH has observed an approximately 50% reduction in the number of procurement protests it receives following the enactment of Act 173. Also, OAH has seen a welcome focus on important contracts and better presentation of the controversies in protest actions following a change in the law to require a tighter calendar for appeals, a focus on major issues (including a higher amount-in-controversy requirement), and the requirement for a substantial protest bond. As the current protest provision portions of the Procurement Code are working well, these provisions should not be eliminated in favor of a federal-type system that lacks the same safeguards and reforms currently in Hawaii's law.

Further, the bill requires selection of a federal agency's procurement regulations, with the General Services Administration rules being the "default rules" if there is no comparable federal agency. Those rules provide for appeals of agency procurement protest determinations to either the agency's Board of Contract Appeals, an administrative tribunal, or the United States Court of Claims. The State of Hawaii, however, has no agency boards of contract appeals, nor does it have a special claims court.

While OAH takes no position on other aspects of procurement impacts of this bill, OAH requests the Committee consider including the following language in order to retain the benefits of an orderly appeals for initial agency decisions on procurement protests under the current law:

Anything in this Act to the contrary notwithstanding, the provisions of sections 103D-709 through 103D-712 shall remain in full force and effect.

Thank you for the opportunity for OAH to provide its comments on this proposed legislation.



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/04/2016

Time: 01:15 PM

Location: 414

Committee: Senate Government Operations

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: SB 2499 RELATING TO CONSTRUCTION CONTRACTS.

Purpose of Bill:

Department's Position:

The Department of Education respectfully opposes this legislation. The effect of this law would create two separate regulatory paths for procurement and contracting activities for any governmental agency involved in construction projects.

Adoption of the Federal rules would necessitate an onerous process of establishing competency with a wide spectrum of staff involved in construction projects that are wholly unfamiliar with the Federal requirements. This would not only be procurement staff, but project managers, architects, and engineers which will need to understand the new regulatory environment they will operate in. In addition, operational policies and protocols will need to be developed to implement the new requirements that will need to be developed from scratch. Even the most basic of forms to document the process would need to be developed along with an operational work flow and the bureaucracy to implement it. This would be an immense undertaking requiring resources, time and money. Such an undertaking is not to be embarked upon lightly, and it is unclear if the benefits, if any would offset the cost.

The adoption of the Federal requirements would also have the unintended consequence of subjecting the Hawaii Process to rulings by any court that has jurisdiction over Federal matters. Events that have little or no relation to conditions in Hawaii will have binding legal effect from the Federal bench. Precedent from the local judicial system will no longer hold sway and the principles the industry have operated under and the predictability that it entailed will be set aside.

Finally, the legislation would create two separate regulatory environments for procurement and contracting. This would require an increase in staffing and related resources to administer both systems. Given the complexity and specialization to effectively manage a procurement operation, and the high volume of work the Department of Education transacts, this legislation would require the establishment of one set of cadre to administer construction, and a wholly separate set to administer the procurement of goods and services for the laws still governed by

the Hawaii Procurement Code. The existence of two wholly independent regulatory environments will cause confusion, waste, and uncertainty that offset any benefits the Federal system may entail.



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Government Operations

Senator Donna Mercado Kim

Thursday, February 4, 2016, 1:15 p.m.
State Capitol, Conference Room 414

By

Joanne Krippaehne

Architect, Capital Improvements Program

Bill No. and Title: Senate Bill No. 2499, Relating to Construction Contracts.

Purpose: Mandate federal statutory requirements relating to construction contracts.

Judiciary's Position:

The Judiciary neither supports nor opposes Senate Bill No. 2499 but offers the following comments on this measure:

1. The bill does not appear to provide for a transition plan. Section 19 states this Act shall take effect upon its approval. A transition plan would provide for comparison of systems and reasonable and orderly migration of policies, procedures and paperwork to implement a Federal system at the State level. Review during such transition should examine whether there might be implications for application of State case law. Limited transition time may result in loss of funding for current Capital Improvement Projects and/or delay of completion.
2. The bill also does not appear to provide for or address the following areas:
 - **Capital Works in Progress.** Lack of guidelines in this bill make it unclear as to which ongoing projects the new requirements might apply or at what stage they would transition.



Senate Bill No. 2499, Relating to Construction Contracts
Senate Committee on Government Operations
February 4, 2016
Page 2

- **Organizational Structure.** Without providing for an organizational structure to administer construction under Federal requirements, it is unclear how education/training would be fulfilled under the new Federal system to the State staff who procure and administer capital improvement programs.
- **Emergency Procurement.** How would construction be procured in an emergency to deal with natural disasters, unforeseen infrastructure failures or other emergencies? Any delay in repairs could pose a threat to the health and safety of employees and/or the public.
- **Design/Build.** Design/build does not appear to be recognized as an option for future consideration.

Thank you for this opportunity to testify on Senate Bill No. 2499.

DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 11TH FLOOR
HONOLULU, HAWAII 96813

Phone: (808) 768-8480 • Fax: (808) 768-4567
Web site: www.honolulu.gov



KIRK CALDWELL
MAYOR

ROBERT J. KRONING, P.E.
DIRECTOR

MARK YONAMINE, P.E.
DEPUTY DIRECTOR

February 3, 2016

The Honorable Donna Mercado Kim, Chair
and Members
Senate Committee on Government Operations
State Capitol, Room 218
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Kim and Members:

SUBJECT: Senate Bill No. 2499, Relating to Construction Contracts

The Department of Design and Construction (DDC) respectfully **opposes** Senate Bill 2499, which subjects the procurement of construction contracts to federal procurement laws.

DDC bids out approximately 100 construction projects annually. Converting our current procedures that are in accordance with existing State laws to Federal procedures would require substantial effort and expenditure of resources. Among other impacts, implementing the required Federal preferences for specific materials and classes of contractors would increase costs and lengthen project durations. We would need to increase staff levels, project budgets, and project schedules.

For these reasons, DDC respectfully **opposes** Senate Bill 2499.

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert J. Kroning", is written over a horizontal line.

Robert J. Kroning, P.E.
Director



**Testimony to the Senate Committee on Government Operations
Thursday, February 4, 2016 at 1:15 P.M.
Conference Room 414, State Capitol**

RE: SENATE BILL 2499 RELATING TO PROCUREMENT

Chair Kim, Vice Chair Ihara, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** SB 2499, which proposes to amend Chapter 103 HRS by requiring the procurement of construction contracts to federal procurement laws.

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 are issued pursuant to federal procurement laws. We support the proposed bill with our suggestions to include planning and design services with construction contracts.

We appreciate the opportunity to express our support for SB. 2499.

Thank you for the opportunity to testify.



ELECTRICAL CONTRACTOR'S ASSOCIATION OF HAWAII

NECA Hawai'i Chapter

1286 Kalani Street, Suite B-203

Honolulu, Hawai'i 96817

PH: (808) 847-7306

FX: (808) 841-8096

Email: ecah@ecahi.com



February 3, 2016

To: Senate Committee on Government Operations
The Honorable Senator Donna Kim, Chairperson

From: Al Itamoto, Executive Director
Electrical Contractors Association of Hawaii
National Electrical Contractors Association, Hawaii Chapter

Subject: SB 2499 Relating to Construction Contracts

Notice of Hearing

Date: Thursday, February 4, 2016
Time: 1:15 PM
Place: Conference Room 414
State Capitol
415 South Beretania Street

Dear Chairs Kim, Ihara and Committee members:

The Electrical Contractors Association of Hawaii (ECAH) is a non-profit association consisting of electrical contractors doing business in the State of Hawaii. ECAH is the Hawaii Chapter of the National Electrical Contractors Association (NECA).

ECAH **strongly opposes** the intent and purpose of SB 2499 relating to changing the State Construction procurement code by adopting Federal procurement laws and removing all of the State's construction procurement rules and procedures. First of all, why would you consider these changes without first conducting a study on the merits of these changes, the impact to the construction procurement process and getting input from all impacted by such change. This bill is premature for consideration at this point.

Most importantly, is the elimination of the subcontractors listing requirement currently in place at the State level. The current State requirement on submitting a subcontractor listing with bids ensures transparency in the procurement process and eliminates the unethical business practice of bid shopping.

Thank you for the opportunity to provide testimony on this issue and encourage this committee to stop this bill from moving forward.

IRONWORKERS STABILIZATION FUND

February 2, 2016

Donna Mercado Kim, Chair
Committee on Government Operations
State Senate
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Dear Honorable Chair Kim and Members of the Committee on Government Operations:

Re: Strong Opposition for SB 2499 – Relating to Construction Contracts

We are in strong opposition of SB 3093, Relating to Construction Contracts; that subjects the State of Hawaii procurement laws to the federal procurement laws.

The purpose of this bill will do away with most of our safe guards for the general public and small businesses. This bill will not only hurt small businesses, but also will not save the state government monies. If you look at the federal procurement laws they have a lot cost overruns and change orders. We also know that most of our signatory companies will not bid for Federal Projects due to the fact that they do not have subcontractor listing and will not get the job. This means companies not tied to Hawaii will get the job and bring their own men from other States to do the job. Our working men and women will not get the jobs.

Consequently for these reasons we oppose this measure for the working men and women of Hawaii. Thank you for your time and consideration.

SAH - Subcontractors Association of Hawaii

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

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

February 4, 2016

Testimony To: Senate Committee on Government Operations
Senator Donna Mercado Kim, Chair

Presented By: Tim Lyons, President

Subject: S.B. 2499 - RELATING TO CONSTRUCTION CONTRACTS

Chair Mercado Kim 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 cannot support this bill as written primarily because Section 4 deletes the provisions for the Subcontractor Listing Clause as stated in 103D-302 (b) which, as we have testified earlier, we think will cause major problems in the construction process.

We would also 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 however we must object to the deletion and repeal of the Subcontractor Listing Clause. Even the Procurement Task Force did not make that recommendation after studying it for a year and a half.

Based on the above, we object to that portion of this bill and will look further at the remainder of the bill.

Thank you.



President

Robin Lim, P.E.
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February 3, 2016

Senate Committee on Government Operations

Hearing Date: Thursday, February 4, 1:15 p.m., Conference Room 414

Honorable Senators Donna Mercado Kim, Chair; Les Ihara, Vice Chair; and Members of the Senate Committee on Government Operations

Subject: **SB 2499, Relating to Procurement
Testimony in OPPOSITION**

Dear Kim, Vice Chair Ihara, and Committee Members:

The American Council of Engineering Companies of Hawaii (ACECH) represents more than 70 member firms with over 1,500 employees throughout Hawaii. ACECH is a strong supporter of HRS §103D-304, the State's "qualification-based selection" (QBS) law, which follows the National model procurement code, for procurement of professional services.

ACECH believes that, in general, the State has a well-developed State Procurement Code and a well-administered State Procurement Office that provides good oversight of the code. Where it makes sense to do so, the State's Procurement Code already uses the best parts of the Federal Code. Related to our industry, we strongly favor the use of QBS for procurement of design professional services, as already provided for in HRS §103D-304, and the current language relative to procurement of design-build construction services. ACECH strongly opposes deletion of the provisions for procurement of design-build services as shown on pages 11-12 of the bill.

Therefore, ACECH respectfully requests this bill be deferred. We appreciate the opportunity to provide testimony on this matter. Please do not hesitate to contact us if you have any questions.

Respectfully submitted,
AMERICAN COUNCIL OF ENGINEERING COMPANIES OF HAWAII

A handwritten signature in black ink that reads "Janice C. Marsters".

Janice C Marsters, PhD
Legislative Committee
808-371-8504

AMERICAN INSTITUTE OF ARCHITECTS

February 4, 2016

Honorable Donna Mercado Kim, Chair
Senate Committee on Government Operations

Subject: **Senate Bill 2499**
Relating to Procurement

Dear Senator Kim and Members of the Committee,

My name is Daniel Chun, Fellow of the American Institute of Architects, practicing local architect for 40 years and President of the American Institute of Architects Hawaii State Council. AIA is **STRONGLY OPPOSED** to Senate Bill 2499 that subjects the procurement of Hawaii construction contracts to federal procurement law.

Why should this legislature and state administration surrender its responsibility and authority relating to one of the most important local industries to an entity headquartered 4,826 miles away? Four time zones away. Hawaii has only four seats in our Congressional delegation, yet the bill would surrender decision-making to a venue where Hawaii has almost one percent representation. The ability for Hawaii construction service providers to have their concerns heard is hugely diminished. A return to territorial status.

Hawaii already has a well-developed State Procurement Code. Hawaii has a well-administered State Procurement Office that provides good oversight of the Code. Hawaii's procurement process needs more agency staff training instead of a radical shift subjecting the state's businesses to the federal code.

AIA specific opposition is to deletion of design-build reform on Page 11 lines 16-21 and Page 12 lines 1-15. AIA and other construction industry groups lobbied this reform several years ago in response to design-build practices that are economically unsustainable over the long term. The deletion means increased overhead and losses to local architects; especially small businesses. Our members tell us unregulated competition and unpaid conceptual design are a huge problem for their businesses and professional existence. Both of these good features are deleted by this bill.

If federal procurement law has some better practices, then specific procurement procedures might be considered rather than the broad bill purpose as stated. Thank you for this opportunity to **STRONGLY OPPOSE** Senate Bill 2499.

From: mailinglist@capitol.hawaii.gov
To: [GVO Testimony](#)
Cc: greggs@hawaii.rr.com
Subject: *Submitted testimony for SB2499 on Feb 4, 2016 13:15PM*
Date: Wednesday, February 03, 2016 2:14:40 PM

SB2499

Submitted on: 2/3/2016

Testimony for GVO on Feb 4, 2016 13:15PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Gregg Serikaku	PAMCA	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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