



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

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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
GOVERNMENT OPERATIONS
January 31, 2023, 3:00 P.M.

SENATE BILL 232
RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE

Chair McKelvey, Vice Chair Gabbard, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 232. The State Procurement Office (SPO) offers the following comments and recommendation.

Comments: The State finds that, per its adoption of the American Bar Association's Model Procurement Code, that past performance is already allowable inside of the procurement statute. In addition, HRS §103D-329 was enacted by Legislature by Act 188, Session Laws of Hawaii (SLH) 2021, to:

- 1) Define past performance of contractors;
- 2) Require the state procurement office to establish and administer a past performance database and adopt rules regarding information and procedures associated with the past performance database; and
- 3) Require procurement officers to consider specific factors, including past performance, when available.

Pursuant to HRS §103D-310(b) and HAR §3-122-108, responsibility shall be made by the procurement officer on the basis of available information. If the procurement officer requires additional information, the bidder may be required to answer questions contained in the attached sample standard questionnaire form, SPO-021 (attached as reference), provided by the procurement policy board back in 2003; not to be confused with the contractor past performance assessment currently in development pursuant to Act 188, SLH 2021 asking for State agencies' prior experience(s) of similar contracts for contractors, as additional information necessary for the determination of responsibility.

In addition, requiring all offerors to submit the standard questionnaire form, SPO-021, provided by the procurement policy board on an annual basis to be prequalified as "responsible" for

projects will be cumbersome and overburden vendors, who may or may not choose to bid on certain projects, or why it would be necessary if the project has already been awarded. It also lacks clarity who is responsible for the collection and oversight of these annual submissions or how the qualifications can be evaluated without specific project details. Pursuant to HAR §3-122-108(b), the offeror or prospective offeror “may be required” to answer questions contained in the sample questionnaire if the procurement officer requires additional information, which means the sample standard questionnaire is optional.

Background/History of Past Performance Rules: On May 28, 2019, the Procurement Policy Board voted to approve to development of past performance Rules.

In 2019, the SPO contracted the services of a consultant to review the Comptroller Construction Task Force Report of 2015, analyze the current environment, assist in the development of past performance rules, and make recommendations for the creation of a database. From 2019 to 2022, the SPO has reviewed the consultant’s report and recommendations, along with feedback from CPO jurisdictions and the contractor community, to determine how best to incorporate the information when amending the Rules.

The Rules will cover what information is required to be included in the contractor past performance database, such as whether or not the project was timely completed; the projects authorized budget; and the positive or negative difference between the final cost of the project and the project’s authorized budget, with the reason(s) for the difference, if any, how to incorporate past performance criteria in a bid or offer, how to evaluate past performance, how to evaluate performance post-award, and how to collect and share that information across siloed agencies through the use of an online central state-wide database.

The Rules will also cover procedures to inform a contractor of the information contained in the State’s contractor past performance database and procedures for a contractor to correct or respond to the information contained in the past performance about that contractor. The State Procurement Office is working on amending and compiling HAR chapter 3-122, which will include a new Subchapter for Contractor Past Performance Assessment, which will need to be approved by the procurement policy board.

Recommendation: Therefore, the SPO recommends removing Section 2, in its entirety, as efforts have already begun to address the government’s ability to identify the lowest “responsible bidder” on all capital improvement projects by considering a contractor’s past performance in the procurement process and is currently in the process of creating a past performance database to launch by December 31, 2023. This database will routinely capture contractor performance information in a structured and uniform way to be accessed online and utilized by government agencies when future procurements need to determine a contractor’s responsibility in competitive sealed bidding in the HAR 3-122, Subchapter 5, in competitive sealed proposals in the HAR 3-122, Subchapter 6, and in sole source procurements in HAR 3-122, Subchapter 9.

Thank you.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committee on Government Operations

From: Cheryl Kakazu Park, Director

Date: January 31, 2023, 3:00 p.m.
State Capitol, Conference Room 225

Re: Testimony on S.B. No. 232
Relating to the Hawaii Public Procurement Code

Thank you for the opportunity to submit testimony on this bill, which would require offerors to fill out and submit questionnaires as part of a procurement submission. The Office of Information Practices (OIP) takes no position on the substance of bill. OIP is testifying to highlight the provision on bill page 6 requiring public disclosure of the submitted offeror questionnaires. This new disclosure requirement would increase public access to procurement information, a category of information that chapter 92F, HRS, the Uniform Information Practices Act (UIPA), treats as being of particularly elevated public interest. Thus, OIP believes this new requirement would promote the UIPA's purpose of opening up government processes to public scrutiny and participation.

Thank you for considering OIP's testimony.

Council Chair
Tasha Kama



Director of Council Services
Traci N. T. Fujita, Esq.


Councilmembers
Tom Cook
Gabe Johnson
Alice L. Lee
Tamara Paltin
Keani N.W. Rawlins-Fernandez
Shane M. Sinenci
Yuki Lei K. Sugimura
Nohelani U'u-Hodgins

Deputy Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

January 27, 2023

TO: The Honorable Angus L.K. McKelvey, Chair
Senate Committee on Government Operations

FROM: Tasha Kama
Council Chair 

SUBJECT: **HEARING OF JANUARY 31, 2023; TESTIMONY IN SUPPORT OF SB 232,
RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE**

Thank you for the opportunity to testify in **support** of this important measure. The purpose of this bill is to help ensure only qualified contractors and subcontractors are awarded capital improvement projects based on past experiences, quality craftwork, efficient operation, and safety not just being the low bidder.

This measure is in the Maui County Legislative Package; therefore, I offer this testimony on behalf of the Council.

The Maui County Council supports this measure for the following reasons:

1. Awarding a capital improvement project solely because a contractor is the lowest bidder does not necessarily ensure timely completion of projects.
2. The bill enhances the government's ability to identify the lowest "responsible bidder" on all capital improvement projects through more comprehensive submission requirements.
3. Ensuring public funds are spent wisely through the proposed submission requirements will foster greater public trust in local government.

For the foregoing reasons, the Maui County Council **supports** this measure.

ocs:proj:legis:23legis:23testimony:sb232_paf23-007(1)_alkl



January 31, 2023

TO: HONORABLE ANGUS L.K. MCKELVEY, CHAIR, HONORABLE MIKE GABBARD, VICE CHAIR, COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **OPPOSITION OF S.B. 232, RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE.** Requires procurement officers, when assessing an offeror's responsibility, to require the offeror to submit answers to questions contained in a standard questionnaire. Establishes certain questions that must be included in the questionnaire. Requires offerors to submit the questionnaire on an annual basis to be prequalified as responsible for projects by the procurement office. Provides that the information furnished in response to the questionnaire shall be available for public inspection and duplication.

HEARING

DATE: Tuesday, January 31, 2023
TIME: 3:00 p.m.
PLACE: Capitol Room 225

Dear Chair McKelvey, Vice Chair Gabbard and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred (500) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. Our mission is to elevate Hawaii's construction industry and strengthen the foundation of our community.

GCA is in **opposition** of S.B. 232, which requires procurement officers, when assessing an offeror's responsibility, to require the offeror to submit answers to questions contained in a standard questionnaire. Establishes certain questions that must be included in the questionnaire. Requires offerors to submit the questionnaire on an annual basis to be prequalified as responsible for projects by the procurement office. Provides that the information furnished in response to the questionnaire shall be available for public inspection and duplication.

The Legislature passed HB 526 in 2021 that requires the State Procurement Office (SPO) to establish a past performance database by the end of 2023. The purpose of both the past performance database and this measure is to ensure that agencies award contracts to qualified bidders. The SPO is currently undergoing rulemaking for the past performance database and GCA would like to see the final database set up before adding additional or perhaps even duplicative requirements.

SB-232

Submitted on: 1/30/2023 8:14:17 AM

Testimony for GVO on 1/31/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ernest Lau	Testifying for Board of Water Supply	Support	Remotely Via Zoom

Comments:

Written testimony was submitted directly to Senator McKelvey's Office on 1-27-2023 supporting the intent of SB232.



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January 30, 2023

**Senate Committee on Government Operations
Hearing Date: Tuesday, January 31, 3:00 p.m.**

Honorable Chair McKelvey, Vice Chair Gabbard, and Members of the Senate Committee on Government Operations

**Subject: SB 232, Relating to the Hawaii Public Procurement Code
Providing Comments**

Dear Chair McKelvey, Vice Chair Gabbard, 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 offers **COMMENTS** on this bill.

Section 3(d) of the proposed bill states “*The procuring officer shall verify compliance with the subsection for all contracts awarded pursuant to sections 103D-302, 103D-303, 103D-304, and 103D-306...*”. We underline Section 103D-304 to point out that this section pertains to the procurement of Professional Services, i.e. architects, engineers, surveyors, and landscape architects. Procurement for these services is selected using Qualification Based Selection (QBS). The proposed language changes in this bill appear to be intended for the procurement of construction contractors through a bid process. We request that contract awards under Section 103D-304 be exempt from the proposed standard form questionnaire as the information required by the questionnaire mostly pertains to construction contractors, not Professional Services.

Respectfully submitted,
AMERICAN COUNCIL OF ENGINEERING COMPANIES OF HAWAII

Nimr Tamimi, P.E.
President



January 31, 2023

Kevin Schmid
Oceanic Companies, Inc.
Chairman

To: Committee on Government Operations
Senator Angus L.K. McKelvey, Chair
Senator Mike Gabbard, Vice Chair

Canaan Shon
Hawaii Geophysical
Services, LLC
Past Chairman

From: Malcolm Barcarse, Jr. ABC Hawaii Board Legislative Committee Chair

Christine Lanning
Integrated Security
Technologies, Inc.
Chairman Elect

Associated Builders and Contractors Hawaii Chapter Testimony in **OPPOSITION** to SB
232

Ross Kawano
ECA, LLP
Treasurer/Secretary

Chair McKelvey, Vice Chair Gabbard and members of the Committee:

Malcolm Barcarse, Jr.
A&B Electric Co., Inc.

Thank you for the opportunity to testify, my name is Malcolm Barcarse, Jr. I am the Chair of the Legislative Committee of Associated Builders and Contractors, Hawaii Chapter which represents over 150 member companies in the Construction Industry in Hawaii. We also have a State Approved Trade Apprenticeship Program in the trades of Carpentry, Electrical, Painting, Plumbing and Roofing. Our national organization has over 21,000 members across 69 chapters.

Ralph Sakauye
Bora, Inc.

Paulina Baker
Redhammer LLC

Jarrett Walters
Hawaiian Building
Maintenance



Making a responsibility determination is meant to “determine whether an offeror has the financial ability, resources, skills, capability and business integrity necessary to perform the work.” According to HRS 103D-310(b.) There are many requirements in construction procurement to address these factors, including bonding and contractor license requirements. Also the State Procurement Office is working on a past performance database to address these sort of questions Furthermore if a procurement officer feels that they need more information out of an offeror they can require a contractor to fill out SPO Form 21 also called a Standard Qualification for Offerors (See attached.) This form is reviewed by the Procurement Agency confidentially to make that responsibility determination.

Austin Doherty
Helix Electric
Chairman

Geoffrey Chu
Oceanic Companies, Inc.
Past Chairman

This bill goes into areas that are covered by other laws unrelated to HRS 103-310(b.) Furthermore, the requirement to make public information that would not otherwise be public pursuant various federal and state laws are not only disturbing but calls into question whether this bill is about trying to ensure the responsibility of offerors or if this information is being used for other purposes. Making sensitive employee and financial information public would also discourage many contractors from participating in public works projects, reducing competition, and increasing costs for the State and counties.

Kathryn Mashima
Mashima Electric
Chairman Elect

David Tsuda
First Hawaiian Bank
Treasurer

Ross Kawano
ECA, LLP
Secretary

State agencies have many tools in their arsenal to determine responsibility. This bill is basically a fishing expedition that confuses the issue of responsibility and chills competition on public works projects. Therefore, we asked that this bill be HELD.

Maurice Torigoe
M. Torigoe Plumbing, Inc.

Michelle Taketa
StarCom Builders, Inc.

Thank you for the opportunity to testify.

2023 CEF ETTF Board of Trustees

Leonard Tanaka
T&T Electric, Inc.

Casey Reed
Helix Electric

Jeff Waiblinger
Consolidated Painting LLC

Christopher Lee
Ayko Group, LLC

SAMPLE

STATE OF HAWAII STANDARD QUALIFICATION QUESTIONNAIRE FOR OFFERORS

issued by the

PROCUREMENT POLICY BOARD

STATE OF HAWAII

June 16, 2003

**To be filed with the procurement officer calling for offers
in accordance with Section 103D-310, HRS, as amended.**

Submitted By _____

Address _____

Date _____

STANDARD QUALIFICATION QUESTIONNAIRE

COVERING EXPERIENCE, EQUIPMENT AND FINANCIAL STATEMENT OF OFFERORS. THE OFFICER CALLING FOR OFFERS MAY REQUIRE THE OFFEROR TO FURNISH ADDITIONAL INFORMATION NOT SPECIFICALLY COVERED HEREIN. ALL ITEMS MUST BE ANSWERED AND OMISSIONS MAY BE CONSIDERED GOOD CAUSE FOR UNFAVORABLE CONSIDERATION.

GENERAL INFORMATION

1. The statements contained in this Questionnaire are being furnished for consideration in submitting an offer for the following project:

(a) Project Title _____

(b) Location _____

(c) Bid Opening Date _____

2. The Questionnaire is being submitted in behalf of:

(a) Name of Offeror _____

- D A Corporation
- D A Partnership
- D An Individual
- D A Joint-Venture

(b) Address _____

(c) Telephone No. _____

(d) Date Submitted _____

3. If the bid is submitted by a joint venture, composed of two or more individual firms, then each member firm comprising the joint venture must submit all information listed on pages 3 through 16, inclusive, of the Questionnaire and, in addition, answer the following:

(a) Members of joint Venture _____

(b) Date of Joint Venture Agreement _____

(c) Is agreement between members comprising the joint venture joint and several liability? _____
If not, state the terms of agreement in this respect: _____

5. Has any officer or partner of your organization in the past five (5) years been an officer or partner of some other organization that failed to complete a contract? If so, state name of individual, other organization and reason therefore _____

6. Has any officer or partner of your organization in the past five (5) years failed to complete a contract handled in his own name? _____ If so, state name of individual, name of Owner and reason therefore.

7. In what other lines of business are you financially interested? _____

8. For what corporations or individuals in the past five (5) years have you performed work, and to whom do you refer? _

9. For what counties within the State of Hawaii have you performed work and to whom do you refer?

10. For what Bureaus or Departments of the State government have you performed work and to whom do you refer?

11. Have you performed work for the U. S. Government? _____

If so, when and to whom do you refer?

12. Have you ever performed any work for any other governmental agencies outside the State of Hawaii? _____ If so, when and to whom do you refer?

13. What is the [construction] experience of the principal individuals of your organization?

Individual's Name	Present Position or Office	Years of Work Experience	Magnitude and Type of Work	In What Capacity?

11. What equipment do you intend to purchase for use on the proposed work, should the contract be awarded to you?

Quantity	Item	Description, Size, Capacity, Etc.	Approximate Cost

12. How and when will you pay for the equipment to be purchased? _____

13. Do you propose to rent any equipment for this work? _____ If so, state type, quantity and reasons for renting _____

FINANCIAL STATEMENT

Submitted by _____

D A Corporation
D A Partnership
D An Individual

Principal Office _____

The signatory of this questionnaire guarantees the truth and accuracy of all statements and of all answers to interrogatories hereinafter made

BALANCE SHEET

As of _____, 20____

Assets

Current assets:

Cash and cash equivalents (1)	\$ _____
Short-term investments (2)	_____
Accounts receivable, net (3)	_____
Inventories (4)	_____
Costs and estimated earnings in excess of billings on uncompleted contracts (5)	_____
Prepaid expenses and other (6)	_____
Sub-Total Current Assets	_____

Property and equipment:

Land (7)	_____
Buildings (8)	_____
Vehicles, machinery and equipment (9)	_____
Furniture and fixtures (10)	_____
Less accumulated depreciation	(_____)
Sub-Total Net Property and Equipment	_____

Other assets:

Cash surrender value of life insurance policies (11)	_____
Deposits and other (12)	_____
Sub-Total Other Assets	_____

Total Assets: \$ _____

BALANCE SHEET (Continued)

Liabilities and Stockholder's Equity

Current liabilities:

Current portion of long-term debt (1)	\$ _____
Accounts payable (2)	_____
Billings in excess of costs and estimated earnings on uncompleted contracts (3)	_____
Accrued liabilities and other (4)	_____
Sub-Total Current Liabilities	_____

Long-term debt, net of current portion (5) _____

 Sub-Total Liabilities & Long-term Debt: \$ _____

Stockholder's equity:

Capital stock (6)	_____
Additional paid-in capital (7)	_____
Retained earnings	_____
Treasury stock (8)	(_____)
Sub-Total Stockholder's Equity	\$ _____

 Total Liabilities and Stockholder's Equity \$ _____

DETAILS RELATIVE TO ASSETS

(1) Cash and cash equivalents:

<u>Financial Institution</u>	<u>Type of Account</u>	<u>Amount</u>
_____	_____	\$ _____
_____	_____	_____
_____	_____	_____
		\$ _____

(2) Short-term investments:

<u>Type of Security</u>	<u>Cost</u>	<u>Unrealized Gains</u>	<u>Unrealized Losses</u>	<u>Estimated Fair Value</u>
_____	\$ _____	\$ _____	\$ _____	\$ _____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
	\$ _____	\$ _____	\$ _____	\$ _____

(3) Accounts receivable (list major debtors):

Completed contracts

<u>Name</u>	<u>Description</u>	<u>Completion Date</u>	<u>Contract Amount</u>	<u>Amount Receivable</u>
_____	_____	\$ _____	\$ _____	\$ _____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
		\$ _____	\$ _____	\$ _____

Other than completed contracts

<u>Name</u>	<u>Description</u>	<u>Due Date</u>	<u>Amount Receivable</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
	Less allowance for doubtful accounts		(_____)
			\$ _____

(4) Inventories

<u>Description</u>	<u>Cost</u>	<u>Market Value</u>	<u>Lower of Cost or Market Value</u>
_____	\$ _____	\$ _____	\$ _____
_____	_____	_____	_____
_____	_____	_____	_____
	\$ _____	\$ _____	\$ _____

DETAILS RELATIVE TO ASSETS (Continued)

(5) Costs and estimated earnings in excess of billings on uncompleted contracts

<u>Name</u>	<u>Description</u>	<u>Completion Date</u>	<u>Contract Amount</u>	<u>Costs and Estimated Earnings to Date</u>	<u>Billings to Date</u>	<u>Costs and Earnings in Excess of</u>
			\$ _____	\$ _____	\$ _____	\$ _____
			\$ _____	\$ _____	\$ _____	\$ _____
			\$ _____	\$ _____	\$ _____	\$ _____

(6) Prepaid expenses and other

<u>Description</u>	<u>Amount</u>
_____	\$ _____
_____	_____
_____	_____
	\$ _____

(7) Land

<u>Description</u>	<u>Location</u>	<u>Amount</u>
_____	_____	\$ _____
_____	_____	_____
_____	_____	_____
		\$ _____

(8) Buildings

<u>Description</u>	<u>Location</u>	<u>Amount</u>
_____	_____	\$ _____
_____	_____	_____
_____	_____	_____
		\$ _____

(9) Vehicles, machinery and equipment

<u>Description</u>	<u>Amount</u>
_____	\$ _____
_____	_____
_____	_____
	\$ _____

(10) Furniture and fixtures

<u>Description</u>	<u>Amount</u>
_____	\$ _____
_____	_____
_____	_____
	\$ _____

DETAILS RELATIVE TO ASSETS (Continued)

(11) Cash surrender value of life insurance policies

<u>Key Employee</u>	<u>Insurance Company</u>	<u>Policy Amount</u>	<u>Paid-Up Additional Insurance</u>	<u>CSV Amount</u>
_____	_____	\$ _____	\$ _____	\$ _____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Less loans payable		_____	_____	(_____)
		\$ _____	\$ _____	\$ _____

(12) Deposits and other

<u>Description</u>	<u>Amount</u>
_____	\$ _____
_____	_____
_____	_____
	\$ _____

DETAILS RELATIVE TO LIABILITIES AND STOCKHOLDER'S EQUITY

(1) Current portion of long-term debt (maturing within 12 months)

<u>Lender</u>	<u>Description</u>	<u>Security Pledged</u>	<u>Due Date</u>	<u>Amount</u>
				\$ _____

				\$ _____

(2) Accounts payable (list major creditors)

<u>Name</u>	<u>Past Due Amount</u>	<u>Amount</u>
	\$ _____	\$ _____
	_____	_____
	_____	_____
	\$ _____	\$ _____

(3) Billings in excess of costs and estimated earnings on uncompleted contracts

<u>Name</u>	<u>Description</u>	<u>Completion Date</u>	<u>Contract Amount</u>	<u>Costs and Estimated Earnings to Date</u>	<u>Billings to Date</u>	<u>Billings in excess of costs and Estimated Earnings</u>
			\$ _____	\$ _____	\$ _____	\$ _____
			_____	_____	_____	_____
			\$ _____	\$ _____	\$ _____	\$ _____

(4) Accrued liabilities and other

<u>Description</u>	<u>Amount</u>
	\$ _____

	\$ _____

(5) Long-term debt, net of current portion

<u>Lender</u>	<u>Description</u>	<u>Security Pledged</u>	<u>Due Date</u>	<u>Amount</u>
				\$ _____

				\$ _____

DETAILS RELATIVE TO LIABILITIES AND STOCKHOLDER'S EQUITY (Continued)

(6) Capital stock

<u>Type of Stock</u>	<u>Class</u>	<u>No. of Shares Authorized</u>	<u>No. of Shares Issued and Outstanding</u>	<u>Par Value</u>	<u>Amount</u>
					\$ _____

					\$ _____

(7) Additional paid-in capital

<u>Description</u>	<u>Amount</u>
	\$ _____

	\$ _____

(8) Treasury stock

<u>Type of Stock</u>	<u>Class</u>	<u>No. of Shares</u>	<u>Cost</u>
			\$ _____

			\$ _____

STATEMENTS OF INCOME AND RETAINED EARNINGS

For the Years Ended _____, 20____ and 20____

	20____	20____
	_____	_____
Contract revenues	\$ _____	\$ _____
Costs of contracts	_____	_____
Gross income from contracts		
General and administrative expenses	_____	_____
Income from operations		
Other income (expense)	_____	_____
Income before income taxes		
Income taxes	_____	_____
Net income		
Retained earnings, beginning of the year	_____	_____
Retained earnings, end of the year	\$ _____	\$ _____

If a corporation, answer this: Capital paid in cash, \$ _____ When Incorporated _____ In what State _____ Date registered in Hawaii _____ President's name _____ Vice-President's name _____ Secretary's name _____ Treasurer's name _____	If a partnership, answer this: Date of organization _____ Date registered in Hawaii _____ State whether partnership is general or limited _____ _____ <table border="1" style="width: 100%;"> <tr> <th style="width: 80%;">Name and address of partners:</th> <th style="width: 20%;">Age</th> </tr> <tr> <td>_____</td> <td>_____</td> </tr> <tr> <td>_____</td> <td>_____</td> </tr> <tr> <td>_____</td> <td>_____</td> </tr> <tr> <td>_____</td> <td>_____</td> </tr> <tr> <td>_____</td> <td>_____</td> </tr> </table>	Name and address of partners:	Age	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
Name and address of partners:	Age												
_____	_____												
_____	_____												
_____	_____												
_____	_____												
_____	_____												

The undersigned hereby declares: that the foregoing is a true statement of the financial condition of the individual, partnership or corporation herein first named, as of the date herein first given; that this statement is for the express purpose of inducing the party to whom it is submitted to award the offeror a contract; and that any depository, vendor or other agency herein named is hereby authorized to supply such party with any information necessary to verify this statement.

NOTE: A partnership must give firm name and signatures of all partners. A corporation must give full corporate name, signature of official, and affix corporate seal.

Affidavit for Individual

STATE OF HAWAII
 COUNTY OF _____

_____ being duly sworn, deposes and says that the foregoing financial statement, taken from his books, is a true and accurate statement of his financial condition as of the date thereof and that the answers to the foregoing interrogatories are true.

Sworn to before me this _____ day of _____ 20____

_____ (Applicant must also sign here)

 Notary Public

Affidavit for Partnership

STATE OF HAWAII
 COUNTY OF _____

_____ being duly sworn, deposes and says that he is a member of the firm of _____; and that he is familiar with the books of the said firm showing its financial condition; that the foregoing financial statement, taken from the books of the said firm, is a true and accurate statement of the financial condition of the said firm as of the date thereof and that the answers to the foregoing interrogatories are true.

Sworn to before me this _____ day of _____ 20____

_____ (Members of firm must also sign here)

 Notary Public

Affidavit for Corporation

STATE OF HAWAII
 COUNTY OF _____

_____ being duly sworn, deposes and says that he is _____ of the _____, the corporation described in and which executed the foregoing statement; that he is familiar with the books of the said corporation showing its financial condition; that the foregoing financial statement, taken from the books of the said corporation, is a true and accurate statement of the financial condition of said corporation as of the date thereof and that the answers to the foregoing interrogatories are true.

Sworn to before me this _____ day of _____ 20____

_____ (Officer must also sign here)

 Notary Public



STATE OF HAWAII
DEPARTMENT OF EDUCATION
KA 'OIHANA HO'ONA'AUAO
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 01/31/2023
Time: 03:00 PM
Location: CR 225 & Videoconference
Committee: Senate Government
Operations

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Title of Bill: SB 0232 RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE.

Purpose of Bill: Requires procurement officers, when assessing an offeror's responsibility, to require the offeror to submit answers to questions contained in a standard questionnaire. Establishes certain questions that must be included in the questionnaire. Requires offerors to submit the questionnaire on an annual basis to be prequalified as responsible for projects by the procurement office. Provides that the information furnished in response to the questionnaire shall be available for public inspection and duplication.

Department's Position:

The Hawaii State Department of Education (Department) provides comments on SB 232.

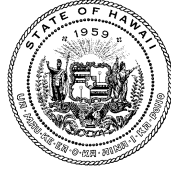
The Department, while supportive of the legislature's intent, has reservations on some of the provisions of this bill. The proposed legislation seems duplicative with Act 188, Session Laws of Hawaii 2021, however the Department would like to defer to the Hawaii State Procurement Office's position regarding this concern.

The Department is concerned the bill does not detail if the annual prequalification will preclude a determination of responsibility after bid opening to address project specific qualifications not captured by a general prequalification.

Additionally, if a bid specific determination is made, it is a concern that a determination of responsibility would be required of all prospective offerors which could cause additional undue administrative burden on the Department.

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

JOSH GREEN, M.D.
GOVERNOR



KEITH A. REGAN
COMPTROLLER
MEOH-LENG SILLIMAN
DEPUTY COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

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

TUESDAY, JANUARY 31, 2023, 3:00 PM
CONFERENCE ROOM 225 & VIDEO CONFERENCE

S.B. 232

RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE.

Chair McKelvey, Vice Chair Gabbard, and members of the Committee, thank you for the opportunity to submit testimony opposing Senate Bill (S.B.) 232 as currently written, which would require procurement officers to make a determination of responsibility for all prospective offerors by requiring them to submit answers based off of a standard questionnaire; establish certain questions that must be included in a standard questionnaire; require offerors to submit the standard questionnaire on an annual basis to be prequalified as responsible for projects by the procurement office; and to provide that the information furnished in response to the standard questionnaire shall be available for public inspection and duplication.

We oppose this proposal because the State Procurement Office, in accordance with Act 188, SLH 2021, is currently developing the past performance database which, once completed,

will serve as a resource for departments, agencies, and the counties to determine responsibility of offerors. Act 188, SLH 2021, also requires the adoption of Administrative Rules regarding the past performance of offerors and is in the process of being adopted by the State Procurement Office. Deferral of this bill is recommended to avoid duplication of efforts and due to potential issues, conflicts, and unintended negative impacts on the procurement process.

This bill, as written, requires the submittal of the standard form questionnaire to the procurement agencies. This is problematic because:

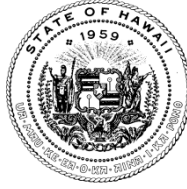
- It increases the burden on prospective offerors by requiring submittals to be made to each agency it intends to submit bids/offers to; and
- It will also significantly add to the regulatory paperwork burden imposed on prospective offerors (many of which are small businesses with limited ability to shoulder that increased burden) and may therefore have the unintended effects of reducing the number of potential offerors, weakening the competitive nature of the procurement process, and biasing the process toward larger business entities with greater ability to absorb the added paperwork burden.
- It would substantially increase the administrative burden on each agency by requiring the collection, review, and determination responsibility associated with the proposed additional requirement to collect the standard form questionnaires (which is currently optional under HRS 103D-310(b)); and
- It creates the potential for conflict and protest by requiring independent review and determination by each agency. Under the proposed legislation it is possible for one

agency to determine a contractor is responsible, while another agency determines the same contractor is not responsible.

If the submittal of standard form questionnaires is required, they should be submitted to a single entity (i.e. the State Procurement Office). The terminology used in the context of the bill would need to be revisited. We recommend deletion of the proposed change in the definition of past performance contained in lines 15-17 on page 2 of the bill. The proposed revisions conflict with Act 188, SLH 2021. It also precludes the consideration of past performance on county construction projects.

In addition, the content of the questionnaire would need to be revisited to make it meaningful for submittal on an annual basis and to facilitate consistent determinations regarding responsibility. We also note that enactment of this bill will make the completed questionnaires subject to disclosure under the Hawaii Uniform Information Practices Act (UIPA), increasing the administrative burden placed on the State Procurement Office (SPO) and/or any agency to whom SPO delegates responsibility for implementing the bill's provisions and, therefore, responding to associated UIPA requests.

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



LATE

TESTIMONY BY:
EDWIN H. SNIFFEN
DIRECTOR

Deputy Directors
DREANALEE K. KALILI
TAMMY L. LEE
ROBIN K. SHISHIDO
JAMES KUNANE TOKIOKA

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

Tuesday, January 31, 2023
3:00 P.M.
State Capitol
Conference Room 225 & Videoconference

S.B. 232
RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE

Senate Committee on Government Operations

The Department of Transportation (DOT) **supports with comments** the bill requiring procurement officers, when assessing an offeror's responsibility, to require the offeror to submit answers to questions contained in a standard questionnaire; establishing certain questions that must be included in the questionnaire; requiring offerors to submit the questionnaire on an annual basis to be prequalified as responsible for projects by the procurement office; and providing that the information furnished in response to the questionnaire shall be available for public inspection and duplication.

The DOT proposes the following revisions, Page 3 line 9 may be revised to delete "prospective" and may read, responsibility for all prospective offerors, including

Page 5 line 19 through 21 may be revised read, submit the required standard form questionnaire on an annual basis to be prequalified as for a project responsibility determination "responsible" for projects, by to the procurement office.

Another consideration is the caliber of work force within, well-established companies versus new companies. There may be an unfair advantage to well-established companies with a changing workforce (i.e., retirements) next to newer companies that may appear less experienced but with highly experienced staff. The questionnaire should be driven on qualifications of the staff performing on the contract instead of the company.

Thank you for the opportunity to provide testimony.

Council Chair
Alice L. Lee



Director of Council Services
Traci N. T. Fujita, Esq.

Councilmembers
Tom Cook
Gabe Johnson
Tasha Kama
Tamara Paltin
Keani N.W. Rawlins-Fernandez
Shane M. Sinenci
Yuki Lei K. Sugimura
Nohelani U'u-Hodgins

Deputy Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us



January 31, 2023

TO: The Honorable Senator Angus L.K. McKelvey, Chair, and Members of the Senate Committee on Government Operations

FROM: Tamara Paltin 
Maui County Councilmember

SUBJECT: HEARING OF JANUARY 31, 2023; TESTIMONY IN SUPPORT OF SB 232, RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE

Mahalo for the opportunity to testify in support of this important measure. The purpose of this measure is to ensure that only qualified offerors are awarded capital improvement projects based on past experiences, quality craftwork, efficient operation, and safety.

I SUPPORT this measure for the following reasons:

1. Requiring offerors to submit answers in a standardized questionnaire enables the procurement office to make accurate assessments of the offeror's responsibility. In addition, requiring the offerors to make these submissions annually to be prequalified for selection saves time and headaches in the selection process by allowing the procurement office to easily screen out offerors who do not meet the minimum requirements.
2. This Act protects taxpayers and preserves administrative resources by instituting more comprehensive submission requirements that provide the procurement office with the necessary information relevant to an offeror's level of responsibility.
3. All information submitted on the standardized questionnaire will be available for public inspection or duplication. This helps ensure the validity of their answers and discourages offerors from submitting false information.