



STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
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 pm

Senate Bill 247
RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Gabbard, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 247. The State Procurement Office (SPO) provides the following comments and concerns.

The amendments proposed for 103D-501, capping change orders may have unintended consequences, which could negatively impact government agencies and ultimately result in higher costs to the taxpayer. Bidders and offerors may inflate their prices to cover possible increases and thereby retaining their original contract.

Additionally, suspending a project and reprocurring for those goods, services, or construction, over the fifty-percent threshold, will inevitably delay the project as a whole, and possibly increase costs. There may be unforeseen circumstances, beyond the agency's control that would necessitate change order(s) that may be time-sensitive, therefore halting a project to reprocur would not be in the best interest of the State.

Furthermore, in the event a new contract is executed, there may be challenges to any warranties or guarantees involving two or more contractors. The other question is which entity is accountable for the completed project. Typically, warranties are only valid for a specific period and may be voided if alterations are made.

If a threshold is desired, it is crucial that this bill provide flexibility to allow the head of the purchasing agency to approve change order(s), otherwise prohibited, to address and mitigate unusual circumstances that may arise that are in the best interest of the state.

Thank you.

JOSH GREEN, M.D.
GOVERNOR



KEITH T. HAYASHI
SUPERINTENDENT

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 0247 RELATING TO PROCUREMENT.

Purpose of Bill: Requires that any procurement change order that increases the contract cost by more than fifty per cent or substantially increases the scope of work be considered a new contract for procurement purpose.

Department's Position:

The Hawaii State Department of Education (Department) provides comments and concerns on SB 247.

While managerial review over the ability to issue change orders over a certain threshold is desirable, the proposed changes requiring the re-solicitation of construction projects will cause disruptions and delays that do not benefit the public and will incur additional costs. The re-solicitation time may be exacerbated by a protest of the project, incurring additional delays and costs.

The Department appreciates the consideration to allow executive waiver of the requirement. However, a significant number, if not most construction projects impacted by robust changes will be adversely affected by a cessation in the project to re-solicit and unduly restrict the ability of the head of the purchasing agency to address these situations.

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

ACEC

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of Hawaii

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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 247, Relating to Procurement Testimony in Opposition

Dear Chair McKelvey, Vice Chair Gabbard, and Committee Members:

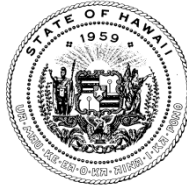
The American Council of Engineering Companies of Hawaii (ACECH) represents more than 70 member firms with over 1,500 employees throughout Hawaii. ACECH **OPPOSES this bill.**

ACECH supports responsible spending of taxpayer monies, however during the planning and design phase of projects, the project objectives and direction can change. These changes can occur as part of the typical engineering process and be within the original scope of work. Such changes can result in additional professional services. We're concerned that this "one size fits all" approach may create problems for complex or difficult projects. Procurement under a new contract would require a new Qualification Based Selection (QBS) process which could ultimately delay the completion and result in a higher total cost for the project.

Respectfully submitted,
AMERICAN COUNCIL OF ENGINEERING COMPANIES OF HAWAII



Nimr Tamimi, P.E.
President



TESTIMONY BY:
EDWIN H. SNIFFEN
DIRECTOR

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

LATE

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. 247
RELATING TO PROCUREMENT

Senate Committee on Government Operations

The Department of Transportation (DOT) **supports** the bill amending Section 103D-501, Hawaii Revised Statutes, requiring that any procurement change order that increases the cost of a contract by more than fifty percent of the original contract cost; having a cost increase that, when added to the cost changes of all prior change orders for that contract, increases the cost of a contract by more than fifty percent of the original contract cost; or that substantially changes the scope of work for a contract, shall be prohibited by rules adopted under subsection (a) and shall be considered a new procurement; provided that the head of the purchasing agency (HOPA) may approve a change order that is otherwise prohibited by this subsection if in a written justification of the approval the HOPA determines that the approval is in the best interest of the State, taking into consideration the purpose and intent of this subsection.

The proposed amendment will support the department's flexibility to address and mitigate unusual circumstances that may arise during the course of the project with appropriate and time-critical action. With HOPA's written justification and approval in determining if change orders are numerous or costly to the extent that it warrants a solicitation for a new contract, the department will be better equipped to ensure appropriate response to act when it is in the best interest of the State, and with a single point of accountability for these decisions.

Thank you for the opportunity to provide testimony.