



## The Senate

STATE CAPITOL  
HONOLULU, HAWAII 96813

August 13, 2021

### **MEMORANDUM**

TO: Curt T. Otaguro, Comptroller  
Department of Accounting and General Services

FROM: Senator Sharon Y. Moriwaki, Chair  
Senate Special Committee on Procurement (SCP) 

SUBJECT: Senate Special Accountability Committee on Procurement Informational Briefing Follow-Up Questions

Thank you for your presentation at the August 4 Senate Special Committee's informational briefing on your department's procurement and contracting policies and procedures. A number of questions and requests for further information arose from the briefing. Below are requests for further information.

We ask that you submit responses by August 27, 2021, to Committee Clerk Kaley Vatalaro at [k.vatalaro@capitol.hawaii.gov](mailto:k.vatalaro@capitol.hawaii.gov). Some of the questions require additional research so please inform us of those which you will submit at a later time but no later than September 30.

Thank you for your attention to this matter.

Attachment, Page 2.

cc: Senator Donovan M. Dela Cruz  
Senator Michelle N. Kidani  
Senator Donna Mercado Kim  
Senator Kurt Fevella  
Audrey Hidano  
Chris Kinimaka  
Bonnie Kahakui

1. State Procurement Office (SPO): One of the challenges identified was the lack of the consistent application of the state procurement law and processes. A major challenge is staffing at the departments, many without procurement officers who are trained and competent in the procurement law and procedures. While online training is available, there is no monitoring or certification of those handling contracting and procurement. It was recommended that there be a centralized procurement office of certified staff within each department. Please research and identify models from other jurisdictions on the types of competencies, training and required certification. If we were to develop a certification program, provide a proposal on what it would include and a cost estimate.

While the law requires the SPO to collect data on bid protests, these are not being analyzed either by the department or by the SPO. Provide a proposal on how the bid protest data can be analyzed in a timely manner and used to assist departments in improving their procurement procedures.

2. Please provide a proposal for, or, if available, an assessment of the state's procurement system and performance of the departments. Currently, there is no monitoring of procurement across the state, and we find out about the problems only when we see bid protests, change orders, unsatisfactory contract performance by both contractors and consultants, including those that are over budget and untimely. Additionally, SPO and DAGS provide guidance to departments when consulted, but not all departments know of this "service." Do we know whether all state departments are using and administering the same criteria when procuring the jobs and/or projects? If not, provide suggestions on how to assure that they are. Would a more established call center staffed with knowledgeable procurement specialists ensure that SPO also provide readily available consultation and circulars on problems or questions that arise? Research other jurisdictions for such a program(s) and, provide the scope and costs, including types of staff required.
3. Public Works Division (PWD): It has been noticed that contractors bid for the amount appropriated for a project or a few dollars below the appropriation. To avoid contracts based on the appropriation rather than on the contractor's assessment of the work required and cost, it is requested that the department research other jurisdictions to find a better solution for the state, e.g., lump sum appropriations so the dollar amount appropriated for a project is masked. This would allow for a fairer assessment and bids based on the work to be performed. Or, if there is a problem in lump sum appropriation, what can your in-house staff do to clearly identify the scope of work of the consultants so both the consultants and in-house professional staff carefully review the scope and/or requirements to satisfy any client *before* the project goes out to bid. This would avoid discrepancies and possibly generate fewer change orders. What is your department doing to address the above concerns? Please provide suggestions to address them.
4. The PWD administrator indicated that there are many areas in which new laws are not needed, but rather, increased enforcement and implementation of current laws should be the primary focus. Please identify these areas where enforcement/implementation of the

current law is needed; and what your department is doing to enforce these laws. Enforcement would also be helpful if the state's licensed engineers and/or architects know and understand the laws to make decisions to enforce when necessary. Do you ensure that they do? If you do, provide the procedures you follow. And, if not, why not; and provide a proposal on how to more effectively enforce the procurement law.

5. The PWD administrator indicated that DAGS/PWD uses a timeline template that leads to consistent and fair application of the procurement laws. Please provide. If the deadlines using this template are not met by contractor/consultant, who on your staff is responsible for enforcing and what are the consequences of non- or late- performance?
6. In reviewing the scope and cost/timeline of the department's contracts, we notice that contracts are hundreds of thousands of dollars over budget. How does the PWD accommodate for these cost overruns?
7. On large construction jobs there should be a limit on the number and cost of change orders. Can the department research other jurisdictions on how they curtail unnecessary change orders? Would limiting the number and cost of change orders to no more than 5%, unless both the state and contractor agree that the request was unforeseen, be a solution?
8. How do we hold the consultants (and our state professionals) accountable for change orders that are mostly "unforeseen" but in reality, are not truly "unforeseen" and perhaps even a change in scope of the project? How and when do you "back charge" consultants where they clearly/completely miss details in either the drawings and/or the scope of work? How are our state professional staff held accountable?
9. In the cradle to grave discussion, the PWD administrator stated that several staff from the planning, design and construction branches are assigned to a project. However, they appear to still work in silos of their branches. Who has the ultimate responsibility over the contract when there are problems in performance or in approving change orders on a project? Who is responsible for the inspection of a project and how do they relate to the "cradle to grave team"? Please provide a list of engineers assigned to inspect projects for the past two years and to whom they report.
10. Due to the cost of consultant services which appear to be duplicative of your licensed architects and licensed engineers on staff, please submit information on the scope of work of professional staff for each branch and the scope of work of the consultant working on the same project(s). Provide a matrix of criteria to determine the type/scope of projects that require contracting out for services and those that can be conducted by professional architects and engineers on staff.
11. Discussion on the professional staff work of your in-house engineers was unclear and did not provide the justification for licensed engineers on staff if their work is primarily

project management. Provide the scope of work required and the competencies needed; and justification on whether a professional license is needed for project management.

12. Is the Comptroller or PWD administrator pursuing establishment of a project manager class? If not, please explain why this position would not be helpful or is not needed. If it is being pursued with the Department of Human Resources Development, what is the status? Please provide the draft position description and qualifications required.
13. Many projects go on for years, way beyond the original contract completion date set at the time of bid. Why does this occur? Provide suggestions on better monitoring and getting projects completed on time. Are “liquidated damages” assessed to the contractor? Please provide statistics for the past 5 years on projects that have not been completed for over 2 years. Also provide for the past 5 years, the projects and number of liquidated damages assessed to the contractors.
14. There are also problems with the long delays in closing out projects which results in retention monies not being paid to vendors. What is your close-out procedure and why does it take so long to close the project? Please provide an explanation and suggestions for addressing how we might have more timely close outs.