



**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

P.O. Box 119  
Honolulu, Hawaii 96810-0119  
Tel: (808) 587-4700 Fax: (808) 587-4703  
<http://hawaii.gov/spo>

**TESTIMONY  
OF  
AARON S. FUJIOKA  
ADMINISTRATOR  
STATE PROCUREMENT OFFICE**

**TO THE  
HOUSE COMMITTEE  
ON  
FINANCE**

March 30, 2011

12:00 PM

SB 1332, SD 2, HD 1

**RELATING TO THE UNIVERSITY OF HAWAII.**

Chair Oshiro, Vice Chair Lee, and committee members, thank you for the opportunity to testify on SB 1332, SD 2 HD 1. The State Procurement Office (SPO) opposes the amendment to extend the exemption granted to the University of Hawaii (UH) from certain provisions of HRS chapter 103D, the Hawaii Public Procurement Code (Code).

UH should not be seeking preferential treatment, as they are a state public university, funded by taxpayer dollars, the same as the Judiciary, DOE, executive agencies, counties, etc., who are all subject to the requirement of the Code. Our public university should be an example of fostering equality, fairness, transparency and openness in government contracting and the procurement process. Passage of this bill provides special treatment for the UH, instead of the university being a leader in championing a level playing field for all.

Public procurement's primary objective is to give everyone equal opportunity to compete for government contracts; to prevent favoritism, collusion or fraud in awarding of contracts. Meeting this objective requires a single set of statutes and rules that define and mandate the use of selection processes that are competitive, efficient, fair, transparent, open and impartial. The Code should not be viewed as an obstacle to a purchasing agency's mission, but rather as the single source of public procurement policy to be applied equally and uniformly

If the Legislature intends to continue this exemption from the Code, the exemption should include assurances that the UH's exempt process includes fair and open competition, disclosure, transparency, due process for aggrieved parties, a defined selection and awards process, and the various elements contained in the Code to ensure public confidence that this exempt procurement process is fair.

We request that this bill be held. Thank you.



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
House Committee on Finance  
March 30, 2011 at 12:00 p.m.

by

Howard Todo

Vice President for Budget & Finance/CFO, University of Hawai'i

SB 1332 SD2 HD1 – RELATING TO THE UNIVERSITY OF HAWAII

Chair Oshiro, Vice Chair Lee and Members of the Committee:

The University of Hawai'i supports the intent of this measure which would extend the repeal date of Act 82, Session Laws of Hawai'i 2010. Act 82 provides the University with a limited two-year time frame in which to pilot revisions to procurement procedures, which, if successful, may be adopted statewide. Because this is not a sufficient period of time to enable the gathering of data on a comprehensive sample of projects and to allow time for the proper development, evaluation, and refinements to the new procurement processes, especially on construction projects which normally require years to complete, we support such an extension. However, SB 1332 SD2 HD1 reduces the proposed extension from three years under SB 1332 SD1 to six months and makes other revisions to Act 82.

Act 82 provided the University with an exemption, with certain exceptions, from the requirements of the Hawai'i Public Procurement Code (Chapter 103D, HRS), effective July 1, 2010. The intent of this legislation was to afford the University with the ability to pilot revisions to procurement procedures to accelerate the acquisition of goods, services, and construction while still obtaining best value and maintaining transparency and fairness in the procurement process. We believe the University is a good place to develop and test new procurement procedures which, if successful, can be adopted for all state agencies, since the University has a robust procurement infrastructure already established, and has many different types of projects to which new procedures can be applied. An example of a successful innovation started by the University when it previously had procurement flexibility, was the creation of an electronic procurement system called "Superquote". Subsequently, a similar system has been adopted by the State. It is our hope that similar innovations may come out of this pilot, which could benefit all state agencies.

Upon passage of Act 82 in 2010, the President of the University appointed a Task Group consisting of members from other governmental agencies and representatives from the construction and engineering industry to assist the University in developing

construction procurement procedures. The Board of Regents approved initial revisions to the University's procurement procedures at its meeting of June 28, 2010, for implementation effective July 1, 2010. The Board subsequently approved the Task Group recommended revisions to these procedures in the area of qualification-based construction procurement at its meeting of September 16, 2010. The University then conducted numerous workshops with the majority of construction related organizations statewide. About 250 contractors attended these workshops and 232 contractors have submitted or are in the process of submitting their statement of qualifications. UH has begun the procurement of construction services for several major projects, such as the Hawaiian Language Building at UH Hilo, and the IT Building at UH Mānoa using these new procedures.

Attached to this testimony is the report we have submitted to the Legislature, as called for by Act 82, on our procurement procedures and the progress of the limited flexibility we've been provided by the Act. Please note that this report summarizes the most significant of the new procedures we have instituted. However, we have had, and continue to have, a very comprehensive set of procedures which have been approved by the Board of Regents. These procedures were in full compliance with the procurement code and, other than the new procedures and revisions adopted as a result of Act 82, continue to be so.

The University's complete procurement procedures may be viewed in their entirety at <http://www.hawaii.edu/apis/apm/a8200.php>.

However, Act 82 affords the University a very limited two-year period in which to pilot revisions to procurement procedures. Because new construction projects normally take 2 to 3 years to complete (longer than that when including planning and design), this window of time does not provide the University with an adequate period to test and refine new procurement procedures and to conduct a comprehensive evaluation and assess the effectiveness of such new procurement processes. Also, for projects which will be in the planning stage in early 2012, less than a year from now, it will be difficult to implement or refine procurement processes since it will be uncertain as to whether we may need to change back to prior procurement rules at June 30, 2012.

SB 1332 SD1 proposed to extend this period by three years, during which the University would make annual reports which may provide the basis for considering changes to the procurement code. SD2 HD1 of SB 1332 reduces this extension to six months. We prefer the three year extension period in order to gather data on a more comprehensive sample of projects and to allow for refinements to processes as we see how the new procurement processes are working. In addition, other revisions made in HD1 reverse the flexibility provided by Act 82.

Accordingly, we respectfully ask that the wording originally proposed in SB 1332 SD1 be restored.

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

# UNIVERSITY OF HAWAI'I SYSTEM REPORT



REPORT TO THE 2011 LEGISLATURE

Report on University of Hawai'i  
Procurement Procedures

Act 82, Session Laws of Hawai'i 2010

December 2010

## **Annual Report to the 2011 Legislature Pursuant to Act 82, SLH 2010 University of Hawaii Procurement Procedures**

### Background

The Legislature, through Act 82, SLH 2010, provided the University of Hawaii exemption, with certain exceptions, from the requirements of the Hawaii Public Procurement Code (HRS Chapter 103D), effective as of July 1, 2010. The intent of providing this limited flexibility to the University was to allow it to pilot innovative procedures to expedite procurement of goods and services, especially construction services while maintaining fairness and transparency. It is hoped that this will aid the economy while helping the University with its capital improvement needs at a time when costs are low and financing is favorable. And if successful and appropriate, the procurement processes piloted by the University may be adopted in the future by the legislature for other state agencies.

### Implementation Actions by the University of Hawaii

Since Act 82, only provides the limited exemption from July 1, 2010 through June 30, 2012, University administration proposed initial revisions to its procurement procedures to be effective July 1, 2010 on an interim basis while further revised processes are being developed for piloting. These initial revisions were approved by the Board of Regents at its meeting of June 28, 2010.

Following that meeting, the President of the University appointed a Procurement Task Group to review the interim procedures and develop further revised procedures for recommendation to the Board of Regents. Members of this Task Group include two members of the Board of Regents, the executive vice president of the General Contractors Association of Hawaii, a representative of the American Council of Engineering Companies of Hawaii, and two construction managers, one from the U.S. Army Corps of Engineers and one from the State of Hawaii Department of Education. After several meetings during which discussions focused on expediting construction projects while maintaining fairness and transparency, the Task Group recommended further revisions to the procedures for the procurement of construction. They proposed three new alternative procedures for qualification-based construction procurement in addition to the revisions previously approved by the Board. These additional revisions were approved by the Board of Regents at its meeting of September 16, 2010.

Subsequently, numerous outreach presentations on several islands were made to approximately 250 members of the General Contractors Association of Hawai'i, Kaua'i Contractors Association, and Hawai'i Island Contractors Association, the Building Industry Association, the Subcontractors Association of Hawaii, Construction Managers Association of America, and Painters and Decorating Contractors Association of Hawai'i. Besides briefing them on the new alternative procurement methods for

construction projects, attendees were made aware of and instructed on the UH's Super Quote electronic bidding process for projects under \$250,000.

For those general contractors that are interested in competing for UH construction projects procured under qualification-based construction procurement procedures which are described in Section A8.280 of the following section of this report, statements of their qualifications are required to be submitted electronically to [www.hawaii.edu/oci](http://www.hawaii.edu/oci). To date, 207 contractors have participated, of which 97 have been qualified, and the balance are in the process of completing their statements.

Since the adoption of the alternative construction procurement procedures on September 16, the following major projects are in the process of being procured using:

I. Section A8.280.1 (Primarily for Design-Bid-Build Construction Projects) of the new procedures:

1. UH Hilo New Hawaiian Language Classroom Building      \$31 million

II. Section A8.280.2 (Primarily for Design-Build or Complex Construction Projects) of the new procedures:

1. UHM New IT Building      \$44 million

III. Section A8.280.3 for Design-Assist construction projects of the new procedures:

1. UHM Webster Hall Renovations for School of Nursing      \$8 million
2. UHM Sinclair Library Renovations      \$6 million
3. UHM BioMedicine Building Renovations      \$6 million
4. UHM Snyder Hall Renovations      \$38 million

The Task Group continues to meet to evaluate further refinements to the interim procurement procedures. They wish to emphasize that the objective of the procurement process should be to efficiently acquire high quality goods and services at competitive prices. While accelerating the procurement process and obtaining low cost are important factors, obtaining the best value is the ultimate goal.

The members of the Task Group have reviewed this report and have unanimously endorsed it.

Pursuant to Act 82, the following additional information is being provided in this report:

I. Description of the University of Hawaii's Internal Procurement Process

The major revisions included in the interim procedures may be summarized as follows:

- A8.220 (General Principles)

Expands the categories of designated goods, services, and construction for which procurement through standard methods of source selection is impractical or disadvantageous, and are therefore exempt from such source selection requirements. These new categories include, among others:

-Subcontracts to organizations directed by the funding agency in an extramural contract or grant;

-Purchases made under cooperative purchasing agreements in which the University participates with other educational institutions;

-Procurement of goods and services from a University commercial enterprise under HRS 304A-2251; and

-Services to recruit international students.

Provides that the Vice President for Budget and Finance may approve other exemptions on a case-by-case basis, as appropriate.

Provides that University decisions regarding complaints filed with respect to University procurement actions shall be final and conclusive (not subject to the automatic stay and DCCA appeal provisions in HRS 103D).

- A8.235 (Competitive Sealed Bidding)

Establishes the competitive sealed bidding threshold at \$250,000 for the purchase of goods, services, and construction.

Requires the University to hold pre-bid conferences for construction or design-build projects with a total estimated contract value of \$500,000 or more.

Requires bidders to submit listings of subcontractors who are to perform work with a value exceeding five percent of the total bid amount for construction contracts where the estimated contract value is \$1,000,000 or higher.

- A8.245 (Professional Services)

Provides that the professional services procurement procedure (pursuant to HRS 103D-304) must be used when acquiring design professional services (architecture, engineering, land surveying, and landscape architecture). Other types of professional services (e.g. legal, audit, etc.) may be acquired by this procedure or other source selection methods (e.g. competitive sealed proposals).

- A8.250 (Small Purchases)

Provides that any procurement of goods, services, or construction less than \$250,000 shall be made through the small purchase process utilizing the University's electronic request for quotations system, except as otherwise provided therein.

- A8.255 (Sole Source Procurement)

Provides that the Vice President for Budget and Finance shall approve all sole source purchases of \$50,000 or more.

- A8.260 (Emergency Procurement)

Provides that the Vice President for Budget and Finance shall approve all emergency purchases of \$50,000 or more.

- A8.280.1 to A8.280.3 (Qualifications-Based Construction Procurement)

Establishes new alternative procedures for the procurement of construction utilizing the solicitation of statements of qualifications from interested contractors and selection based on qualification and performance based criteria. Construction may still be acquired through other source selection methods such as competitive sealed bidding or competitive sealed proposals as well.

1. Section A8.280.1 (Primarily for Design-Bid-Build Construction Projects)

- a. All interested contractors to be ranked after evaluation by a selection committee using established selection criteria. All interested contractors who timely submit a written expression of interest and statement of qualifications are ranked by a selection committee using selection criteria established by the selection committee and included in the notice of the construction project posted on a University website.
- b. Top ranked contractors invited to submit sealed offers. Once the ranking is established, a minimum of the five highest ranked contractors (or all submitting contractors if the number is less than five contractors), are invited to submit sealed offers.
- c. Contract award made to offeror submitting the lowest priced bid. Contract award is made to the invited contractor submitting the lowest priced offer, regardless of ranking among those contractors invited to submit sealed offers.



d. Used primarily for Design-Bid-Build construction projects. This new construction procurement procedure is intended for use for pre-designed construction of a general nature, including, without limitation, Design-Bid-Build construction projects.

2. Section A8.280.2 (Primarily for Design-Build or Complex Construction Projects).

a. All interested contractors to be ranked after evaluation by the selection committee using established selection criteria. All interested contractors who timely submit written expressions of interest and provide statements of qualifications are ranked by a selection committee using selection criteria established by the selection committee and included in the notice of the construction project posted on a University website.

b. Top ranked contractors invited to submit sealed proposals. Once the ranking is established, a minimum of the five highest ranked contractors (or all submitting contractors if the number is less than five contractors), are invited to submit sealed proposals in a modified request for proposals (RFP) process.

c. Establishment of proposal selection criteria. Before such an invitation, the selection committee, together with the University's designated officer responsible for managing and overseeing the construction, establishes the proposal selection criteria that will be used to evaluate the submitted proposals. These proposal selection criteria are separate and apart from the selection criteria established to evaluate the qualifications of the interested contractors.

d. Notify contractors of the proposal selection criteria. As part of the invitation to submit proposals, the University's designated officer notifies the contractors invited to submit proposals of the proposal selection criteria that the selection committee will use to evaluate the proposals.

e. Contents of proposals. Each proposal submitted includes design plans and the proposal price.

f. Contract award. Regardless of ranking among those contractors invited to submit proposals, contract award is made to the invited contractor submitting the proposal that is determined to be the most advantageous to the University, considering price and the other selection criteria.

- g. Used primarily for Design-Build construction projects. This new construction procurement procedure is intended for use primarily for Design-Build construction projects and other complex construction projects where the University does not want proposal price to be the sole determining factor among the top-ranked contractors.

3. Section A8.280.3 (Primarily for Design-Assist construction projects)

- a. Construction contract negotiated with the top ranked contractor. The construction contract is negotiated with the highest ranked contractor based on a purely qualifications-based evaluation (no priced offers or proposals are requested).
- b. All interested contractors to be ranked after evaluation by the selection committee using established selection criteria. The ranking of all interested contractors who timely submit a written expression of interest and statement of qualifications is conducted by a selection committee using the selection criteria established by the selection committee and included in the notice of the construction project posted on a University website.
- c. University's designated officer to negotiate the construction contract. The ranking of all such interested contractors is furnished to the University's designated officer who will manage and oversee the construction and will negotiate the construction contract with the highest ranked contractor.
- d. Contract awarded if negotiations are successful. Contract award is made to the highest ranked contractor if the University and the contractor can reach agreement on the terms of a negotiated contract at a fair and reasonable price.
- e. Used primarily for Design-assist construction projects. This construction procurement procedure is best suited for design-assist construction projects or highly specialized projects with unique requirements.

The University's revised interim procurement procedures may be viewed in their entirety at [www.hawaii.edu/apis/apm/a8200.php](http://www.hawaii.edu/apis/apm/a8200.php)

II. Description of the University of Hawaii's internal procedures for handling protests of solicitations or awards of contracts

The University's procedures for addressing complaints regarding the solicitation or award of procurement contracts is set forth in Section A8.220(10) which provides as follows:

Procurement Complaints

- a. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may submit a complaint to the Procurement Officer.
- b. A complaint shall be submitted in writing within five working days after the aggrieved party knows or should have known of the facts giving rise thereto; provided that a complaint regarding an award or proposed award shall in any event be submitted within five working days after the posting of award of the contract. In no event shall a complaint based upon the content of the solicitation be considered if submitted after the date set for the receipt of offers. Complaints which are not timely filed shall not be considered
- c. To expedite handling of complaints, the complaining party should submit the written complaint in an envelope labeled "Procurement Complaint" and either served personally or sent by registered or certified mail, return receipt requested, to the Procurement Officer. The written complaint shall include at a minimum the following:
  - 1) The name and address of the complaining party;
  - 2) Appropriate identification of the procurement, and, if a purchase order or contract has been awarded, its number;
  - 3) A statement of reasons for the complaint; and
  - 4) Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the time provided for filing, in which case the expected availability date shall be indicated.
- d. The Procurement Officer shall render a decision on a complaint as expeditiously as possible after receiving all relevant information as requested. A copy of the decision shall be mailed or otherwise furnished promptly to the complaining party. The decision shall be final and conclusive.

III. Description and summary of any protests or litigation that have arisen during the period of time that the University of Hawaii has been exempt from HRS Chapter 103D pursuant to Act 82, SLH 2010

No protests or litigation regarding the solicitation or award of contracts under the University's interim procurement procedures have been filed since July 1, 2010, the effective date of Act 82, SLH 2010.