

SB 1383

Testimony

Measure Title: RELATING TO THE UNIVERSITY OF HAWAII.

Report Title: University of Hawaii; Department of Accounting and General Services;
Procurement; Construction Contracts

Description: Repeals the president of the University of Hawaii's authority to serve as the chief procurement officer for construction contracts for the University of Hawaii and requires the state administrator of the state procurement office of the department of accounting and general services to serve as the chief procurement officer for such contracts.

Companion:

Package: None

Current Referral: HRE/EGH, WAM

Introducer(s): KIM



EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

Thursday, February 14, 2013, 2:45 PM
State Capitol Room 414

Testimony of
Policy Office of the Governor, State of Hawaii

To the Senate Committees on Higher Education and Economic Development,
Government Operations and Housing

Senator Brian T. Taniguchi, Chair, Higher Education Committee
Senator Gilbert Kahele, Vice Chair, Higher Education Committee

Senator Donovan M. Dela Cruz, Chair, Economic Development, Government
Operations and Housing
Senator Sam Slom, Vice Chair, Economic Development, Government Operations
and Housing

Senate Bill 1383 – University of Hawaii

Chair Taniguchi, Chair Dela Cruz, Vice Chair Kahele, Vice Chair Slom, and members
of the Committees:

The Office of the Governor supports Senate Bill 1383 (SB 1383), Relating to the
University of Hawaii. As the Legislature reviews the operations of the University of
Hawaii, it is also important to review the procurement authority of the University.
Consideration should be given to the provisions of this bill to strengthen accountability
and performance in construction-related procurement in order to advance the educational
and research mission of the state's public higher education system.

Thank you for the opportunity to testify.



**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
SENATE COMMITTEES
ON
HIGHER EDUCATION
AND
ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS AND HOUSING

February 14, 2013

2:45 p.m.

SB 1383

RELATING TO THE UNIVERSITY OF HAWAII.

Chair Taniguchi, Chair Dela Cruz, Vice-Chair Kahele, Vice-Chair Slom, and committee members, thank you for the opportunity to testify on SB 1383. The bill proposes to redirect the University of Hawaii (UH) chief procurement officer (CPO) authority to the State Procurement Office (SPO) CPO, limited to construction contracts.

The SPO plans, organizes, directs, and coordinates various activities to assist all state and county governmental bodies statewide, to meet compliance with the Hawaii Public Procurement Code (Code), HRS chapter 103D, and Purchases of Health and Human Services, HRS chapter 103F. For further information on SPO activities, including a summary of SPO's mission and goals, view the *SPO Executive Overview* at the SPO homepage <http://hawaii.gov/spo>.

To meet compliance, SPO assistance is provided in the form of:

- Consultation and advice on any procurement issues specific to a requesting agency;
- Issuance of Procurement Circulars that provide guidance and requirements, are available at <http://spo3.hawaii.gov/circulars/circulars>;

- Availability of extensive statewide procurement training, including related trainings such as *Understanding, Detecting and Preventing Anti-Trust Violations, Overview of Property Loss, Auto Accident and Tort Claims*, to ensure personnel have the knowledge and tools (forms, sample templates, etc.) to conduct procurements. Training information is available at <http://hawaii.gov/spo/training/training-for-state-and-county-personnel>;
- Availability of SPO Price or Vendor List Contracts that SPO has conducted the procurement or issued in accordance with cooperative purchasing statutes. Contracts are available at <http://spo3.hawaii.gov/pvl/price-vendor-lists>.

For executive branch departments, which the SPO Administrator serves as the CPO, various processes are in place such as:

- Issuance of written procurement delegation to each department head ensures clarity of responsibilities. Current delegation information is available at <http://hawaii.gov/spo/state-county-personnel-manual/procurement-delegation/procurement-delegation-authority>;
- Direct oversight on specific areas such as appropriate use of emergency procurement, sole source, and exemptions; and includes contract extensions, restrictive specifications which require CPO approval. Requests for CPO approvals are available at <http://hawaii.gov/spo2/source/>.

If the legislature decides that the UH is in need of SPO's oversight, we will incorporate this additional responsibility into current operations.

Thank you.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
The Senate Committee on Higher Education and the Committee on Economic
Development, Government Operations and Housing
February 14, 2013 at 2:45 PM

by
John Morton
Vice President for the Community Colleges
University of Hawai'i

SB 1383 – RELATING TO THE UNIVERSITY OF HAWAII

Chair Taniguchi and Chair Dela Cruz, members of the Senate Committee on Higher Education and the Senate Committee on Economic Development, Government Operations, and Housing.

Thank you for the opportunity to testify in opposition to this measure.

SB 1383 proposes repealing the President of the University of Hawaii's authority to serve as the chief procurement officer for construction contracts for the University of Hawai'i and requires the state administrator of the state procurement office of the department of accounting and general services to serve as the chief procurement officer for such contracts.

This bill proposes to amend Section 103D-203 of the state procurement code which currently appoints separate chief procurement officers for the University of Hawai'i and other semi-autonomous entities in the state such as the Department of Education, the Hawai'i Health Systems Corporation, county boards or departments of water supply and public transit agency, as well the Senate, the House of Representatives, the Judiciary, the Office of Hawaiian affairs and the executive and legislative branches of the counties. This measure would remove the authority for procuring construction contracts only from the University of Hawai'i.

This would mean that the ability to prioritize, execute and administer the procurement of construction contracts for the University would no longer be within the authority and responsibility of the Board of Regents and the University's administration. The University would no longer have the ability to direct resources necessary to ensure the timely procurement of construction contracts.

Currently, the University has \$206 million in major construction underway, \$229 million of major projects soon to be procured and \$187 million of health, safety, code, and repairs and maintenance projects in various stages of design and construction, for a total in excess of \$622 million. We are concerned that removing the University's authority to procure its own construction projects will adversely impact the upcoming procurement of these construction projects. The University is operating in compliance with the procurement code and has demonstrated that it is quite capable of

expeditiously procuring its own construction projects. Accordingly, we do not see the need or benefit for this amendment to the procurement code which would differentiate the University from other entities with separate chief procurement officers and authority.

If this measure is a result of concern over the limited flexibility the University previously had in procurement, which was sunset on June 30, 2012, we provide the following information:

The Legislature, through Act 82, SLH 2010, provided the University of Hawai'i flexibility from certain requirements of the Hawai'i 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 was intended to aid the economy while helping the University with its capital improvement needs at a time when costs were low and financing favorable. And the procurement processes piloted by the University could be adopted in the future by the legislature for other state agencies.

Since Act 82 only provided the limited flexibility to the University 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 were 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 included two members of the Board of Regents, the executive vice president of the General Contractors Association of Hawai'i, a representative of the American Council of Engineering Companies of Hawai'i, and two construction managers, one from the U.S. Army Corps of Engineers and one from the State of Hawai'i 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 Hawai'i, Construction Managers Association of America, and Painters and Decorating Contractors Association of Hawai'i.

The University's interim procedures for qualifications-based construction procurement may be viewed in their entirety at:

<http://www.hawaii.edu/apis/apm/abol/a8200.201207/proc/A82801.pdf>

<http://www.hawaii.edu/apis/apm/abol/a8200.201207/proc/A82802.pdf>

<http://www.hawaii.edu/apis/apm/abol/a8200.201207/proc/A82803.pdf>

The interim procurement procedures are no longer in effect as the limited flexibility provided by Act 82 ended on June 30, 2012. However, during the two years of the interim construction procurement procedures, the University successfully procured 21 projects system wide for a total construction cost of \$192 million.

Even with this limited implementation timeframe, this limited flexibility allowed the University to pilot innovative procedures to expedite procurement of goods and services, especially construction services while maintaining fairness and transparency. The University also believes that these construction projects aided the economy while helping the University with its capital improvement needs at a time when costs were low and financing was favorable. Furthermore, the University feels the pilot was successful and processes piloted were appropriate and effective, and hopes that they may be adopted in the future by the legislature for other state agencies.

In conclusion, while we believe the pilot allowed by Act 82, SLH 2010 was successful, the legislation has ended and the University has been operating in compliance with the state procurement code since July 1, 2012. Accordingly, we do not see the need or benefit for this amendment to the procurement code which would differentiate the University from other entities with separate chief procurement officers and authority. This would mean that the ability to prioritize, execute and administer the procurement of construction contracts for the University would no longer be within the authority and responsibility of the Board of Regents and the University's administration. The University would no longer have the ability to direct resources necessary to ensure the timely procurement of construction contracts.

For these reasons the University is in opposition to this bill. Thank you for the opportunity to testify on this measure.

THE SENATE
THE TWENTY-SEVENTH LEGISLATURE, 2013
STATE OF HAWAII

COMMITTEE ON HIGHER EDUCATION
Senator Brian T. Taniguchi, Chair
Senator Gilbert Kahele, Vice Chair

Honorable Senator Gilbert S. C. Keith-Agaran
Honorable Senator Sam Slom
Honorable Senator David Y. Ige
Honorable Senator Michelle Kidani
Honorable Senator Jill N. Tokuda

Date: Thursday, February 14, 2013

Time: 2:45 p.m.

Place: Conference Room 414, State Capitol, 415 South Beretania Street

RE: Testimony In Strong Support for S.B. 1383 – Relating to the University of Hawaii; Department of Accounting and General Services; Procurement; Construction Contracts

My name is DENNIS MITSUNAGA. I have been a practicing Structural Engineer since 1969 and General Contractor since 1971. I am currently President/Owner of Mitsunaga and Associates, Inc. (MAI) and Majority Owner of Mitsunaga Construction Incorporated (MCI).

I did the Engineering for the Chemistry Building at the University of Hawaii (UH) Manoa for DAGS in 1969 and have since done many, many DAGS and UH projects, including the Rainbow Baseball Stadium. Our firm (MAI) recently completed the design of the UH Hilo Student Housing, Phase I, which is now under construction.

By this letter, I would like to take this opportunity to offer testimony in FAVOR of S.B. 1383, which transfers construction administration and procurement back to DAGS.

I have been in business since 1969 and have worked with every government agency administering non-bid and construction contracts in Hawaii. During my long career, I have found DAGS to be the most efficient, well organized and cost effective agency.

- A. Because of their set up with five (5) separate branches (Contracts, Planning, Design, Project Management and Inspection), their projects go smoothly from start to finish, progressing from one branch to the next. Their staff members are dedicated and well qualified professionals.
- B. Bids almost always come in within budget because of their history with past projects. Change Orders during construction are few.

- C. Also, because of the existence of their Inspection Branch, the State automatically saves 5-6% for Construction Management (CM) fees during construction.
- D. I have come to the conclusion that although DAGS' design fees are among the lowest compared to other State agencies their efficiency throughout the project makes up for it.

On the other hand, working with the UH Office of Capital Improvement (OCI) and its Director BRIAN MINAAI (Brian) has been a nightmare for members of our firm working on the UH Hilo Student Housing, Phase I. In the process of giving us a difficult time, Brian gave away millions of dollars on this project alone and should be investigated for BLATANT MISMANAGEMENT.

- A. Brian's process for selection of non-bid consultants is highly suspect.
 - 1. His selection committee consists of his two "Yes Men" assistants and a third member from the department involved with the particular project. In essence since he controls two out of the three votes he himself makes each selection.
 - 2. With the exception of MAI, he only selects his friends from a pool of hundreds of qualified Architects and Engineers in Honolulu.

Investigation will show that the consultants he selected were very small and not the best qualified for the projects he "gave" them.
 - 3. A small firm he selected to do major renovations to the Gateway Hall Dormitory complex was ARCHITECT BRYCE UYEHARA.
 - a. If you can recall, Bryce Uyehara was the Architect who made major errors in designing the Girl's Softball Stadium at UH Manoa.

He designed the "line of sight" too high, so the spectators in the stands couldn't see home plate and the batters' lower body. I remember that it cost the State and UH over \$500,000 to make the corrections.
 - 4. We believe that MAI was selected for the UH Hilo Student Housing Project because of UH Hilo's strong and insistent endorsement of MAI. If not for UH Hilo's active participation in the selection process, we all consensually believe that Brian would have given the project to his friend.

- B. Had it not been for the two (2) year exemption on procurement that the legislature gave to UH, Brian's actions against MAI after the selection would have been a criminal violation of the State Procurement Law HRS §103D-304.

After the selection, Brian took the following punitive actions against MAI and MCI:

1. Brian directed MAI to replace MAI as the project Civil Engineer with Wesley Segawa (Segawa).
 - a. MAI had applied for and were selected for this project with MAI as the Civil Engineer of Record.
 - b. Segawa's fee to do the Civil Engineering for this project was \$293,260.

MAI had to add a 10% coordination fee of \$29,326 plus G.E. tax, hence Brian's directive cost the State an additional \$29,326 plus G.E. tax for this project.
2. Brian directed MAI to replace Kimura International as the Environmental Assessment Consultant with Wilson Okamoto.
3. Brian directed MAI to use Palekana to do the permit/processing. Palekana's fee for this service is \$23,000.
 - a. Permit Processing is usually part of the Architect's or Engineer's basic service and there is usually no separate charge for this work.
 - b. The basic work involves answering questions and making changes that the Building Department may require. These questions and changes has to be answered and done by the designers of record for the specific work; hence the Architect would answer the Architectural questions, the Civil Engineer would answer the Civil questions, the Structural Engineer the Structural questions, the Mechanical Engineer the Mechanical questions, Electrical Engineer the Electrical questions, etc.

So, as you can see from the description above, there is very little the permit processor can do except to provide pick up and delivery service since he does not have the expertise.

Brian's directive was a straight add on to the contract and wasted an additional \$23,000 plus our 10% coordination fee plus G.E. tax of the State's money.

- c. On a related note, MAI previously did the Civil Engineering as a sub-consultant to Architect Jeff Nakamura (Nakamura) on the Cancer Research Center in Kakaako.

Nakamura called MAI one day to inform us that Palekana was charging him \$120,000 to process the permit and that our portion was \$32,000. He said not to worry about it because he would pay the \$32,000 for us.

- 1) Looking back, his call is very confusing because the Cancer Research project is in Kakaako and Kakaako is exempt from permit requirements. You may want to ask Brian about this.

4. Unknown to MAI and MCI, Brian replaced MCI as the Design Assist Consultant with AC Kobayashi. He also named Kobayashi as the Contractor for the project.

- a. Again, MAI was selected with MCI on its team as the Design Assist Consultant. One of the UH Hilo Administrators commented that they wanted MAI because MAI was the only applicant with a Contractor (MCI) on its team. MCI had also done and is doing a lot of these apartment/dorm type structures.

MCI is currently contemplating filing suit against the UH and Brian for damages.

C. No Accountability of Costs

1. During the design phase MAI was directed by Brian to draw up whatever the Contractor wanted done and to not question his costs.

MAI had no control over the design, cost or schedules. MAI had to follow the Contractor's and Brian's directives. The Contractor set the framing system, materials to be used, and the schedules.

The wooden framing system dictated to us by the Contractor and approved by Brian will require heavy maintenance because of all the rain in Hilo.

2. Although MAI has construction expertise, MAI was never asked to provide any kind of cost estimate for this project. There is no INDEPENDENT ESTIMATE to check Kobayashi's price.

After questions raised by MAI, Brian hired Ryder Bucknell after the fact as a shibai. There is still no independent cost verification since Ryder Bucknell worked in collusion with Kobayashi to come up with their estimate which Brian will probably use to deflect questions which may arise later.

D. Never Ending Project

1. This project is never ending for MAI since the Contractor is constantly making changes to increase their profit margin. MAI is still working to make changes even though a construction contract was signed a long time ago. Any savings generated by MAI changes should be credited back to the State, but we have no way of knowing if this is being done.

E. Blatant Waste of State Money

1. Brian gave the Construction Contract to Kobayashi. Kobayashi in turn subcontracted the concrete and site work to Isemoto Construction and the framing to Coastal Construction. In other words, Kobayashi subcontracted out all of the General Contractor's work since the rest of the work is done by specialty subs.

- a. The big question is why didn't Brian give the contract to Isemoto directly instead of Kobayashi.

Isemoto is large, financially stable General Contractor based in Hilo with lots of heavy equipment. They are the largest Contractor in Hilo. I have worked with them before and know them personally.

If Brian gave the contract directly to Isemoto instead of Kobayashi, the State would have saved the 12 to 15% mark up for overhead and profit that Kobayashi probably added to manage the project. The mark up for this project is probably \$3 to 4 million.

F. Poor Administration

1. MAI was given the Notice to Proceed for the UH Hilo Student Housing project on 9/21/11. We received the executed contract almost a year later on 9/19/12. This delay would never have happened had DAGS been involved. DAGS would have issued the contract to us within 60 days.

The delay caused a hardship for MAI and its subconsultants.

2. UH Beach Volley Ball Court

- a. MAI completed this project over a year ago but has yet to receive a contract.

It is my personal opinion that Brian Minaai and the OCI is not capable of efficiently administering the construction projects at UH. It is my hope that OCI be abolished and the money saved be used for student benefits.

Please pass S.B. 1383 to return the construction administration and procurement of UH projects back to DAGS.

Sincerely,

Dennis K. Mitsunaga