



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Higher Education
March 23, 2021 at 3:00 p.m.

by
Jan Gouveia, Vice President for Administration
University of Hawai'i System

HB 1067 HD1 – RELATING TO PROCUREMENT FOR THE UNIVERSITY OF HAWAII

Chair Kim, Vice Chair Kidani and members of the Committee:

Thank you for the opportunity to submit testimony on HB 1067 HD1. The University of Hawai'i (University) is in strong support of this measure, which amends section 6 of Act 42, Session Laws of Hawai'i (SLH) 2018, to remove the sunset provision and permanently reinstate the President of the University of Hawai'i (President) as the chief procurement officer for contracts for construction and construction-related professional services. The University is grateful that the authority of the President as chief procurement officer was temporarily reinstated in 2018 (Act 42, SLH 2018 (SB 2831)). However, the permanent reinstatement of the President as the chief procurement officer would prevent the return to an inefficient and complicated bifurcated procurement system when Act 42, SLH 2018, as currently written is repealed on June 30, 2021.

In 2018, Act 42, SLH 2018, was signed into law that, among other things, amended Hawai'i Revised Statutes (HRS) §§103D-203 and 304A-2672 to reinstate the authority of the President as the Chief Procurement Officer for construction-related procurements and provided a sunset date of June 30, 2021 for the repeal of the act and reenactment of HRS §§103D-203 and 304A-2672 as amended in 2013 by Act 87, SLH 2013 (HB 114).

Act 87, SLH 2013 (HB 114), among other things, amended HRS §§103D-203 and 304A-2672 to:

- Require the Administrator of the State Procurement Office (SPO), rather than the University of Hawai'i President, to serve as the Chief Procurement Officer for construction-related procurements;
- Require all procurements for professional services furnished by licensees under chapter 464 (i.e. Engineers, Architects, Surveyors, and Landscape Architects) for construction projects to be “coordinated” with the Department of Accounting and General Services (DAGS); and
- Require SPO to submit a report to the legislature, no later than twenty days prior to the convening of the regular session of 2016, of the Administrator's findings and recommendations, including any proposed legislation, relating to the transparency, efficiency, and compliance of the University of Hawai'i's procurement of construction contracts and construction-related consultant services pursuant to chapter 103D, HRS.

Currently and prior to 2013, the President has been afforded the duties, powers and authority of a chief procurement officer – similar to the Administrative Director of the Courts for the Judiciary, President of the Senate, Speaker of the House of Representatives, Chairperson of the Board of the Office of Hawaiian Affairs, Superintendent of the Department of Education, CEO of Hawai'i

Health Systems Corporation, the Administrator of the State Procurement Office, the respective finance directors of the counties, the respective chairpersons of the councils of the counties, the managers and chief engineers of the respective county boards of department water supply, and director of the semi-autonomous public transit agency.

The chief procurement officer plays an integral role in the day-to day transactions of all procurements under chapter 103D, HRS – which is an already complicated and time-consuming effort. It became further complicated and time consuming when this role was transferred to the Administrator for SPO, along with the additional requirement of coordinating with DAGS. Fortunately, the Administrator for SPO and the Public Works Director for DAGS handled the situation with professionalism and sensitivity to their impact on UH's CIP program, and all parties agreed to some basic parameters and a process for all construction-related procurements.

In accordance with the Act, the SPO Administrator submitted a report to the 2016 Legislature entitled, "State Procurement Office Findings and Recommendations Relating to the University of Hawai'i's Procurement of Construction Contracts and Construction-Related Consultant Services Pursuant to Chapter 103D Hawai'i Revised Statutes as Required by Act 87, SLH 2013, 'Relating to Higher Education.'"

The report documents the extensive oversight, reviews, cooperation and coordination between the University and the SPO on procurements for construction and construction-related professional services. As documented in the report, between July 1, 2013 to June 30, 2015, the SPO reviewed 102 University solicitations for construction out of 373 construction procurements conducted by UH during that time. The reviews included solicitations for competitive sealed bids, professional services, and small purchases. The SPO also provided oversight of post-award procurement activities by conducting eleven (11) construction site visits and three (3) desktop reviews of on-going projects.

The conclusion to the report stated:

"Based on SPO's review of 102 UH construction solicitations, UH's Administrative Procedures, and fourteen (14) post-award Site Visits, SPO finds that UH is conducting construction procurements in a compliant, efficient, and transparent manner."

The SPO report set forth minimal recommendations for improvement and, in fact, lauded some University-specific procedures as "best-practices." While the University has implemented the SPO recommendations, it has continued to improve the efficiency, transparency and compliance of its capital program since the Report:

1. To ensure strict compliance with the Hawai'i Public Procurement Code, the University has extensively revised policies and procedures related to the procurement of construction and professional services to align with Section 103D HRS and its related Hawai'i Administrative Rules.
2. To ensure the prudent and transparent expenditure of public funds, the University established a core staff of procurement professionals, dedicated solely to the procurement of construction and construction-related professional services.
3. The University has adopted the Hawai'i Electronic Procurement System (HePS) which provides real-time and immediate access to by all interested contractors, consultants and

vendors to construction solicitations, bidder submittals, and public notice of awards on a single, online platform.

4. To ensure the prudent and transparent management of public funds, the University has acquired a collaborative, cloud-based construction project management system called e-Builder®. The goal is to provide visibility into the status of our construction projects so all stakeholders have access to real-time information and ensure projects are delivered on-time and on-budget. As a web-based solution, it captures project data and utilizes electronic workflow to track business processes and generate reports that support a capital program at both the micro and macro level.
5. To reduce the time required for the procurement of professional services and construction in nine different areas, the University has begun utilizing Requirements or Indefinite Delivery Indefinite Quantity (IDIQ) contracts systemwide. By having contracts already in place when work is needed in these areas, the University is able to simply issue a work order to the contracted vendor, greatly reducing the time spent on procurement.
6. To ensure the delivery of high quality projects, the University has expanded the use of the competitive sealed proposal procurement method to procure both Design-Build and construction projects (fully designed). This provides the University with the ability to award based on best value versus the lowest price.

Additionally, from fiscal years 2018 through 2020, the University processed a total 250 construction and construction-related procurement contracts and received a total of only eight protests. All of the protests were resolved and none of the protesters requested a hearing with the Department of Commerce and Consumer Affairs.

The University has tremendous regard for the Administrator and the entire State Procurement Office team. We appreciate the long-standing relationship based on respect and professional courtesy. However, under the structure imposed by Act 87 in 2013, the University was operating under a bifurcated procurement system. There was one set of procedures, templates, forms and approval work flows specific to goods and services, for which the President served as the chief procurement officer; and another set of processes for construction and construction-related professional services that utilized the SPO forms, templates, and procedures, for which the SPO Administrator served as the chief procurement officer for the University. This dual authority structure also caused confusion for UH personnel with procurement requirements, support staff processing procurement and related documents, and, more importantly, the vendor and contracting community who bid on University projects.

With the finding by SPO set forth in its Report to the Legislature that “UH is conducting construction procurements in a compliant, efficient, and transparent manner,” and the additional improvements that the University has made specifically to the management and solicitation of its construction projects, the University believes full chief procurement officer authority should be permanently restored to the President. This is particularly important at a time when the University is expected to aggressively address its deferred maintenance backlog. With the additional safeguards and imposition of industry best practices, we believe the University has demonstrated that it can and will continue to conduct its construction procurements in a compliant, efficient, and transparent manner.

Thank you for the opportunity to testify in strong support of HB 1067 HD1.



STATE OF HAWAII
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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
HIGHER EDUCATION

March 23, 2021, 3:00 PM

HOUSE BILL 1067, HD1
RELATING TO PROCUREMENT FOR THE UNIVERSITY OF HAWAII

Chair Kim, Vice Chair Kidani, and members of the committee, thank you for the opportunity to submit testimony on HB1067 HD1. The State Procurement Office (SPO) supports SECTION 6 of the bill amending sections 103D-203 and 304A-2672, Hawaii Revised Statutes (HRS), to permanently restore authority to the President of the University of Hawaii (UH) to act as the Chief Procurement Officer (CPO) for contracts for construction and construction-related professional services furnished by licensees under Chapter 464, HRS.

Act 87, SLH 2013 (HB 114), "Relating to Higher Education" was signed into law on May 31, 2013. By enacting Act 87, the Legislature amended HRS §103D-203 and §304A-2672 by repealing the authority of the President of the UH to serve as the CPO for construction contracts and professional services, furnished by licensees under chapter 464 (i.e. Engineers, Architects, Surveyors, and Landscape Architects), related to construction contracts and assigned those responsibilities to the Administrator of the SPO.

To implement the requirements of this Act, the SPO issued UH Procurement Delegation No. 2013-01 delegating procurement authority to the UH President as well as a Memorandum of Agreement (MOA) delineating SPO's oversight responsibilities and UH's responsibilities and procedures. The SPO also imposed a high-level oversight role in order to evaluate the UH's construction procurement practices by collecting and reviewing data related to the UH's construction procurements for FYs 14 and 15, in order to provide fact-based report to the Legislature by January 2016.

The SPO's report documented the extensive oversight, reviews, cooperation, and coordination between the SPO and the UH on procurements for construction and construction-related professional services. As documented in the report, between July 1, 2013, to June 30, 2015,

the SPO reviewed 102 University solicitations for construction out of 373 construction procurements conducted by UH during that time. The reviews included solicitations for competitive sealed bids, professional services, and small purchases. The SPO also provided oversight of post-award procurement activities by conducting eleven (11) construction site visits and three (3) desktop reviews of on-going projects.

As of April 4, 2016, the Memorandum of Agreement (MOA) between the University of Hawaii and the State Procurement Office was revised to clearly identify the duties and responsibilities of UH and SPO to operate in accordance with Act 87, SLH 2013. Pertaining to UH procurements of construction contracts and construction related professional services, UH was named as the Primary entity responsible for initiating and completing the tasks, while the SPO would be available if any guidance or directions are needed. The SPO has not received any requests for guidance or directions from UH to date.

Based on the SPO's review of 102 UH construction procurements from July 1, 2013, to June 30, 2015, UH's Administrative Procedures, and 14 post-award site visits, the SPO found that the UH was conducting construction procurements in a compliant, efficient, and transparent manner. As such, based on the SPO's findings and recommendations, the SPO supports permanently restoring the UH President's full authority to act as the Chief Procurement Officer for all the UH's procurements, including the procurement of construction and construction-related professional services.

Thank you.

HB-1067-HD-1

Submitted on: 3/22/2021 11:56:53 AM

Testimony for HRE on 3/23/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nathaniel Kinney	Testifying for Hawaii Construction Alliance	Comments	No

Comments:

Chair Kim and Members,

We wanted to offer comments on this bill that would remove the sunset for the University's procurement exemption.

We are deeply concerned about the move from "best value" to "low bid" contracting that is now occurring in the UH system, and a move towards P3 projects without sufficient agreements in place to ensure quality construction craftsmanship.

Our mission is to ensure that reputable local contractors and local workers provide quality construction projects in the State of Hawaii and unfortunately, this may not always be the case for university projects.

We are in favor of the "design-build" process, but only when there are adequate safeguards to ensure that the contractors participating in this process are paying the correct prevailing wages to their workers.

Mahalo,

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

LATE

Uploaded via Capitol Website

March 22, 2021

TO: HONORABLE DONNA MERCADO KIM, CHAIR, HONORABLE
MICHELLE KIDANI, VICE CHAIR, COMMITTEE ON HIGHER
EDUCATION

SUBJECT: **SUPPORT OF H.B. 1067 HD1, RELATING TO PROCUREMENT FOR
THE UNIVERSITY OF HAWAII.** Removes the sunset provision in Act 42,
Session Laws of 2018.

HEARING

DATE: Tuesday, March 23, 2021
TIME: 3:00 p.m.
PLACE: Capitol Room 229

Dear Chair Kim, Vice Chair Kidani, 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 **support** of H.B. 1067 HD1, which removes the sunset provision in Act 42, Session Laws of 2018.

Act 42, Session Laws of 2018 reinstated the President of the University of Hawaii as the chief procurement officer. Construction projects have been streamlined and greatly improved under the University of Hawaii's leadership. The GCA through its Committee has worked with the University of Hawaii in identifying ways to improve the delivery of university projects. The University of Hawaii has been open to hearing feedback and identifying ways in which it can improve in the execution of important repair and maintenance projects and new construction by ensuring the process is efficient and transparent.

For these reasons we ask that the Committee pass this measure.

Thank you for this opportunity to testify in support of this measure.