



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Government Reform
February 4, 2022 at 9:30 a.m.

By
Jan Gouveia
Vice President for Administration
University of Hawai'i

HB 2183 – RELATING TO THE PROCUREMENT OF PROFESSIONAL SERVICES

Chair McKelvey, Vice Chair Wildberger, and members of the committee:

Thank you for the opportunity to present testimony on HB 2183 – Relating to Procurement of Professional Services. The University of Hawai'i supports this bill, which allows agencies to proceed with two or fewer qualified persons in the procurement of professional services, provided that the purchasing agency determines in writing that it is in the best interests of the State to proceed.

This would provide flexibility in securing professional services when the University has less than three qualified persons. Because this is not an uncommon occurrence, allowing agencies to proceed with the solicitation upon a written determination is in the best interest of the state.

Thank you for the opportunity to testify in support of HB 2183.



**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 586-0554
email: state.procurement.office@hawaii.gov
<http://spo.hawaii.gov>

TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
GOVERNMENT REFORM

February 4, 2022; 9:30 AM

HOUSE BILL 2183
RELATING TO THE PROCUREMENT OF PROFESSIONAL SERVICES

Chair McKelvey, Vice Chair Wildberger, and members of the committee, thank you for the opportunity to submit testimony on HB2183. The State Procurement Office (SPO) submits the following comments:

In 1995, the Procurement Policy Board created Hawaii Administrative Rule (HAR) § 3-122-66 to address the situation if less than three qualified persons responds to a professional services notice. With no opposition from the public, the rule became effective on December 15, 1995.

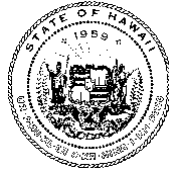
Due to the results of the *Asato v. Procurement Policy Board* ruling by the Supreme Court of Hawaii, HAR § 3-122-66 was repealed on June 15, 2016. Since its repeal, agencies were required to broaden or reduce the scope of work, as applicable, and repeatedly resolicit until three responses were received.

SPO recommends amending page 1, SECTION 1, lines 5-10 to read:

If less than three qualified persons respond to a solicitation, the agency may submit a request for alternative procurement approval from the chief procurement officer or designee.

The SPO supports the intent of the bill for the purpose of decreasing the waste of government resources.

Thank you.



CURT T. OTAGURO
COMPTROLLER
AUDREY HIDANO
DEPUTY COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
CURT T. OTAGURO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
GOVERNMENT REFORM

FRIDAY, FEBRUARY 4, 2022, 9:30 A.M.
VIA VIDEOCONFERENCE, STATE CAPITOL

H.B. 2183

RELATING TO THE PROCUREMENT OF PROFESSIONAL SERVICES

Chair McKelvey, Vice Chair Wildberger, and members of the Committee, thank you for the opportunity to submit testimony on H.B. 2183. The Department of Accounting and General Services (DAGS) supports this bill as it allows agencies more timely alternatives to complete procurement of professional services when there are fewer than three qualified respondents.

Thank you for the opportunity to submit testimony on this matter.

HB-2183

Submitted on: 2/3/2022 8:31:42 AM

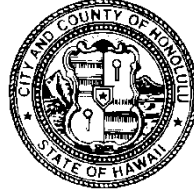
Testimony for GVR on 2/4/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Christine Kinimaka	DAGS	Support	Yes

Comments:

I am available for questions in support of DAGS written testimony submitted.

RICK BLANGIARDI
MAYOR



ANDREW T. KAWANO
DIRECTOR

CARRIE CASTLE
DEPUTY DIRECTOR

TESTIMONY OF ANDREW T. KAWANO
DIRECTOR OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
BEFORE THE HOUSE COMMITTEE ON GOVERNMENT REFORM
February 4, 2022, 9:30 AM, Conference Room 309 and Videoconference

TO: The Honorable Angus L.K. McKelvey, Chair
and Members of the House Committee on Government Reform

RE: SUPPORT OF HOUSE BILL 2183, RELATING TO PROCUREMENT OF
PROFESSIONAL SERVICES

The Department of Budget and Fiscal Services, City and County of Honolulu (City), **supports** House Bill (HB) 2183, Relating to Procurement of Professional Services.

Hawaii Revised Statutes §103D-304 does not allow for an alternative if the minimum three (3) qualified persons cannot be obtained. Professional service procurements may be delayed indefinitely until the minimum is obtained.

For the reasons stated above, the City respectfully supports House Bill 2183.

Mahalo for the opportunity to testify on this bill. Should you have any questions or concerns, please feel free to contact the Department of Budget & Fiscal Services' Division of Purchasing at 808-768-5535 or bfspurchasing@honolulu.gov.

ACEC

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of Hawaii

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Website: www.acechawaii.org

February 3, 2022

House Committee on Government Reform House Committee on Legislative Management Hearing Date: Friday, February 4, 2022, 9:30 a.m.

Honorable Chairs Angus L.K. McKelvey and Dale T. Kobayashi and Members of the Committees

Subject: HB 2183, Relating to State Procurement Reform TESTIMONY IN OPPOSITION

Dear Chair McKelvey, Chair Kobayashi, 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 member firm projects directly affect the quality of the water we drink; the safety of our buildings, highways, bridges, and infrastructure; and the quality of the environment in which we work and play.

Qualification-based selection for the procurement of design professional services, in accordance with HRS §103D-304, is of great importance to the membership of ACECH as well as other groups representing design professionals. "Qualifications-based selection" (QBS) is the nationally recognized model procurement code for the procurement of design professional services. The Committee may recall that, prior to enactment of §103D-304, procurement of professional design services in Hawaii was rife with abuse and corruption, and negative news articles greatly damaged public faith in our procurement processes. §103D-304 was strongly supported by ACECH to provide fairness and transparency in public procurement, and to restore public faith in procurement of design professional services. The legislature clearly felt that design professional procurement deserved special care, as it limited procurement methods to sections 103D-304 and -307 (emergency), while allowing other professional services to be obtained through other methods (including sole source procurement).

Last week, ACECH also testified in opposition to SB 2385, which seeks to amend the State's QBS law in a similar manner. After review of SB 2385 testimony, ACECH engaged in conversation with stakeholders to better understand the specific challenges and instances of which less than 3 qualified persons responded to a solicitation, discuss concerns, and collaborate on potential solutions. ACECH recognizes that there may be instances where less than three qualified persons respond to a solicitation. However, amendments to the State QBS law must be thoroughly vetted to ensure such language does not inadvertently erode the foundation of QBS and facilitate the type of abuse that HRS §103D-304 was enacted to protect against.

Similarly, ACECH opposes this bill, HB 2183 as written because of the gravity and importance of protecting the integrity of the State QBS law. ACECH requests this bill be held until further conversation with stakeholders is held to vet the potential negative consequences.



ACECH intends to continue to collaborate with stakeholders, industry groups, and our membership to seek out solutions to the issues that this bill intends to solve. If specific language cannot be agreed upon this legislative session, we request a working group be created. We further request that the working group include representatives from the American Council of Engineering Companies of Hawaii (ACECH), American Institute of Architects (AIA), State Procurement Office (SPO), Department of Accounting and General Services (DAGS), University of Hawaii (UH), Department of Transportation (DOT), and other stakeholders.

We appreciate the opportunity to provide testimony on this matter. Please do not hesitate to contact us if you have any questions.

Respectfully submitted,
AMERICAN COUNCIL OF ENGINEERING COMPANIES OF HAWAII

A handwritten signature in black ink, appearing to read "Derek Mukai".

Derek Mukai, P.E.
President



February 4, 2022

TO: Honorable Angus McKelvey, Chair
House Committee on Government Reform

FROM: Reid Mizue, AIA
Vice President / Legislative Advocacy Group
American Institute of Architects, Hawaii State Council

SUBJECT: **Re: House Bill 2183**
Relating to Procurement of Professional Services

The American Institute of Architects

AIA Hawaii State Council
828 Fort Street Mall, Suite 100
Honolulu, HI 96813

T (808) 628-7243
contact@aiahonolulu.org
aiahonolulu.org/AIAHawaiiStateCouncil

Dear Chair McKelvey and Members of the Committee,

My name is Reid Mizue VP/President-elect AIA Hawaii Council submitting **STRONG OPPOSITION** to House Bill 2183. The bill amends HRS 103D-304 with underscored text: If the purchasing agency fails to receive submissions from a minimum of three qualified persons, the purchasing agency may proceed with two or fewer qualified persons, provided that the purchasing agency determines in writing that it is in the best interests of the State to proceed with fewer than three qualified persons.

Pre-qualified listing

HRS 103D-304 Subsection (b) requires public notice BEFORE THE BEGINNING OF EACH FISCAL YEAR FOR SERVICES THAT THE AGENCY ANTICIPATES NEEDING IN THE NEXT FISCAL YEAR. This subsection fast-tracks construction projects already poised for appropriation and gives advance warning if too few qualified persons respond to Notice. Subsection encourages further notices; the first reason being inadequate response. Based on our members' experience, public agencies have done this for the most part. Many public agencies have good practice of "open enrollment" accepting statements of qualifications at any time to encourage competition from more firms.

HRS 103D-304 Subsection (c) Review Committee to confirm meeting minimum qualifications. It is said that holding Hawaii design professional license under HRS 464 is the only qualification, but architects may include any promotional material that better informs

the Selection Committee of subsection (d). This is another feature of current law seeking to preclude too few qualified persons. AIA believes in broadest competition for public contracts.

AIA has reached out to other A&E organizations and this research indicated that some incredibly unique design contracts attract “very few to zero” submissions for inclusion on pre-qualified list. Despite being the largest organization of Hawaii architects, AIA has not been consulted by agencies regarding this problem. AIA will always be willing to offer solutions rather than being confronted by HB 2183 and its Senate companion.

AIA opposes HB 2183 language:


1. HB 2183 reverses **decades** of state procurement practice, reinforced by *Asato v. Procurement Policy Board* wherein Hawaii Supreme Court reinforced long-standing state policy of “no fewer than three qualified persons.”
2. HRS 103D-304 was passed in 2001; the **reform** responding to wide charges of public corruption in award of design professional contracts. AIA believes it is unfortunate to see House Government Reform Committee entertain the current language that reads similar to the corruption of selection processes of the past prior to QBS. This bill is not “in the best interest of the state” or the people of Hawaii.
3. HB 2183 sets NO minimum number; meaning only one person could be deemed qualified and thus selected. If professional service is so unique that it attracts too few competitors under 103D-304; agency should then consider an award under 103D-306 Sole Source. Process under State Procurement Office SPO seems ethical requiring written justification, consideration of the person’s qualifications, posting public notice of pending award and considering any written objections. AIA experience with several SPO chiefs is that they managed the office in very ethical manner.
4. Current law subsection (j) already allows option for agency to make award from any **two persons** on pre-qualified list of subsection (c) when contract is less than \$100,000 limit of 103D-305. “Bundling” small \$ contracts into larger contract would likely attract more competition and reduce agency workload.

HB 2183 is too great a change for an alleged problem that is relatively small in the overall budgets for State agencies.

The current law has stood unamended for past twenty years. All positive testimony, atypically very brief justifications, from public agencies focuses only on limited number of projects; overlooking the huge number and dollar value of professional services ethically procured.

Thank you for this opportunity to **STRONGLY OPPOSE** House Bill 2183.

Sincerely,

A handwritten signature in black ink, appearing to read "Reid T. Mizue". The signature is fluid and cursive, with a long horizontal stroke at the end.

Reid Mizue, AIA
American Institute of Architects, Hawaii State Council

HB-2183

Submitted on: 2/2/2022 12:04:49 PM

Testimony for GVR on 2/4/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Gerald Gordner	Individual	Oppose	No

Comments:

I oppose HB2183 because it would create a significant loophole in the competitive bidding process. Selecting a provider of "professional services" often means picking an individual, so this procurement category should be treated with extra scrutiny to protect against favoritism.

If the purchasing agency is not receiving enough submissions, the correct remedy is to improve their process for announcing requests and attracting bids, not relaxing the rules for selection. This bill might instead require the selection committee to proactively seek additional submissions by sending the RFP/RFQ to all past providers of a similar service in the procurement database and/or local and state professional organizations in the relevant field.

HB-2183

Submitted on: 2/2/2022 8:06:15 PM

Testimony for GVR on 2/4/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Sandie Wong	Individual	Oppose	Yes

Comments:

I oppose this measure and join in the comments of the American Council of Engineering Companies-Hawaii. Thank you.

My name is Daniel Chun testifying in STRONG OPPOSITION to HB 2183. Language “fails to receive submissions from a minimum of three qualified persons” can be manipulated as Review Committee works internally to develop list of subsection (c). “Two or fewer” means that **ONLY ONE** person may be considered for award. Having lobbied design professional procurement bills since mid-1990s, my opinion:

TOO GREAT/DANGEROUS A CHANGE FOR RELATIVELY SMALL PROBLEM

Agency testimony does not list projects / types of projects for which HB 2183 is being considered. Agency problems would be better understood if listing could be seen. Their testimony overlooks the overwhelming number and cumulative dollar value of unprotested design contracts awarded under 103D-304. An argument for “flexibility: is not enough to convince design professions that have lobbied and defended the current law; passed in response to charges of public corruption.

Allowing “two or fewer” opens up possibility that situation of Asato v. Procurement Policy Board might happen again; 26 contracts awarded with combined value of \$144 million dollars while ranking only two persons. The ruling cited years of legislative intent for “minimum of three” and discussed redefining project scope as one way to obtain more interested persons.

I hear of DOT challenge finding engineer for highway guardrail crash testing. Maybe too much professional liability? Perhaps the scope is not exclusively in realm of engineering? **Perhaps nationally-experienced engineer not licensed under chapter 464, the criterion mandating use of 103D-304.** Perhaps creative design-build contract to build concrete full-scale mock-up and then test could be done using 103D-303; “maximum of three” being the language for design-build. I did not read any minimum number of offerors for design-build contract; except the number must be disclosed in RFP. The rumored project being Hana Highway bridges, a design-build contract could make sense given the challenges of remote location and difficult topography.

Thank you for the opportunity to **STRONGLY OPPOSE** House Bill 2183.

“fails to receive submissions from a minimum of three qualified persons”,

the purchasing agency may proceed with two or fewer qualified persons, provided that the purchasing agency determines in writing that it is in the best interests of the State to proceed with fewer than three qualified persons.

HB-2183

Submitted on: 2/3/2022 9:05:51 AM

Testimony for GVR on 2/4/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Janice Marsters	Hart Crowser, Inc.	Oppose	No

Comments:

Honorable Representatives:

I am a Senior Principal with Hart Crowser, a division of Haley & Aldrich, a geotechnical engineering, environmental engineering, and natural resources consulting firm with offices on O‘ahu and Maui. I have led design professional firms in Hawai‘i for 30 years.

Procurement of engineering services is serious business because of the impact of our work on public health and safety. Qualifications-based selection (QBS) is the nationally recognized model procurement code for the procurement of design professional services. Prior to enactment of §103D-304, procurement of professional design services in Hawaii was rife with abuse and corruption, and negative news articles greatly damaged public faith in our procurement processes. §103D-304 was strongly supported by local engineering firms to provide fairness and transparency in public procurement, and to restore public faith in procurement of design professional services.

We are concerned that this bill erodes QBS. While we recognize that agencies may have difficulties in procuring services in some areas, the proposed language is too vague and opens the door to abuse. We request that you defer this bill until the stakeholders can discuss the concerns and develop better language with appropriate controls.

Respectfully submitted,

Janice Marsters

808.371.8504