



STATE OF HAWAII
STATE PROCUREMENT OFFICE

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Honolulu, Hawaii 96810-0119
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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
GOVERNMENT REFORM
FEBRUARY 3, 2021, 8:30 A.M.

HOUSE BILL 841
RELATING TO PROCUREMENT

Chair McKelvey, Vice-Chair Wildberger, and members of the committee, thank you for the opportunity to submit testimony on HB841. The State Procurement Office (SPO) opposes the language on page 1, lines 12 to 17, and page 2, lines 1 to 6. The added language to subsection (g) of Section 103D-304, Hawaii Revised Statutes (HRS), is contradictory with the Professional Services Method of Procurement and is aimed particularly at specific groups of professionals.

A procurement process is followed resulting in contracts for professional services that are awarded on the basis of demonstrated competence and qualification for the type of services required, at fair and reasonable prices.

At a minimum, before the beginning of each fiscal year, the head of the purchasing agency (HOPA) shall publish a notice inviting persons engaged in providing professional services which the agency anticipates needing in the next fiscal year, to submit current statements of qualifications and expressions of interest to the agency. The review committee evaluates all submissions and prepares a list of qualified persons to provide these services.

During the course of the fiscal year when the agency needs a particular professional service, the HOPA shall designate a selection committee to evaluate the statements of qualification and performance data of those persons on the list. The selection committee may conduct confidential discussions with any person who is included on the list regarding the services which are required and the services they are able to provide. In conducting discussions, there shall be no disclosure of any information derived from the competing professional service offerors. The selection committee shall rank a minimum of three persons based on the selection criteria employed in descending order of importance as 1) Experience and professional qualifications relevant to the project type; 2) Past performance on projects of similar scope for public agencies

or private industry; 3) Capacity to accomplish the work in the required time; and 4) Any additional criteria relevant to the purchasing agency's needs or other conditions required to determine the applicant qualified to provide needed services. The fourth criteria shall not include items that would be part of the contract negotiations conducted by the HOPA, such as the rate of compensation. The selection committee shall send the ranking to the HOPA and the HOPA or designee shall negotiate a contract with the first ranked person. If a satisfactory contract cannot be negotiated with the first ranked person, negotiations with that person shall be formally terminated and negotiations with the second ranked person on the list shall commence. Failing accord with the second ranked person, negotiations with the next ranked person on the list shall commence.

HB841 amends subsection (g) of Section 103D-304, HRS, to allow any selection committee that evaluates an engineering, architectural, surveying, or landscape architectural professional service submittal for a state or county contract to require the top ranked competing professional service offerors to submit cost or pricing data on their respective proposals. It also specifies that a purchasing agency is not required to disclose competing cost or pricing data to any party.

Under the Professional Services Method of Procurement, the top-ranked professional service offerors do not submit proposals and cost or pricing data for comparison. They are ranked according to their qualifications and other selection criteria, and the HOPA or designee will negotiate a contract, including rate of compensation with the first-ranked person. Purchasing personnel have the obligation to conduct thorough acquisition planning to determine specific needs that are reasonable within the industry. A cost estimate of the needed services may be obtained through market research and price analyses.

Subsection (g) of Section 103D-304, HRS, should not be amended to add language that conflicts with the Professional Services Method of Procurement. The process already allows the selection committee to send the top three ranking to the HOPA and the HOPA or designee will have contract negotiations including rate of compensation, which is based on the estimated value, scope, complexity and nature of the services that are to be received.

Thank you.

HB-841

Submitted on: 2/1/2021 7:24:54 AM

Testimony for GVR on 2/3/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Cari Ishida	Carollo Engineers	Oppose	No

Comments:

On behalf of Carollo Engineers, Inc., I strongly oppose the proposed House Bill No. 841 for the following reasons:

- “Qualifications-based selection” (QBS) is the nationally recognized model procurement code for the procurement of design professional services. Hawai‘i’s QBS law, §103D-304 has been in place for more than 20 years and works to provide quality design professional services to the public.
- Prioritizing costs in the selection of design professional services is burdensome to agencies as they would need to provide firms with a well-developed scope of work. This would also put the risk of the project approach on the agency rather than the design professional firm. Agencies typically know what they want as an outcome, but perhaps not the best way to get there. They hire the most qualified firm to help them develop/refine the scope and approach.
- The current statute provides for the agency to move on to the next qualified firm if the agency and the selected firm cannot come to an agreement on design fees. There is no obligation of the agency to accept a fee they find too high. Requiring agencies to prepare a scope of work that could be priced by multiple firms during the selection process would increase agency costs and effort and slow the procurement process significantly.
- The bill could result in much higher overhead costs for our firm. Currently firms work with government agencies to negotiate scope and fee after they are selected as the most qualified. Expending scarce resources to prepare proposals for which may not be selected would be very difficult, and we may not be able to offer for all projects where we may be highly qualified. These potential extra costs are critical at this time of business uncertainty and higher costs.

Mahalo for your consideration.

Sincerely,

Cari Ishida, PhD, PE, ENV SP

Office Manager for Carollo's Honolulu Office

Legislators

I am writing in opposition of HB 841

- “Qualifications-based selection” (QBS) is the nationally recognized model procurement code for the procurement of design professional services. Hawai‘i’s QBS law, §103D-304 has been in place for more than 20 years and works to provide quality design professional services to the public.
- Prioritizing costs in the selection of design professional services is burdensome to agencies as they would need to provide firms with a well-developed scope of work. This would also put the risk of the project approach on the agency rather than the design professional firm. Agencies typically know what they want as an outcome, but perhaps not the best way to get there. They hire the most qualified firm to help them develop/refine the scope and approach.
- The current statute provides for the agency to move on to the next qualified firm if the agency and the selected firm cannot come to an agreement on design fees. There is no obligation of the agency to accept a fee they find too high. Requiring agencies to prepare a scope of work that could be priced by multiple firms during the selection process would increase agency costs and effort and slow the procurement process significantly.
- The bill could result in much higher overhead costs for our firm. Currently firms work with government agencies to negotiate scope and fee after they are selected as the most qualified. Expending scarce resources to prepare proposals for which may not be selected would be very difficult, and we may not be able to offer for all projects where we may be highly qualified. These potential extra costs are critical at this time of business uncertainty and higher costs.

Further, not observing QBS turns the Architect and Engineering Community into a commodity rather than a profession.

David B. Bills
Bills Engineering Inc.
1124 Fort Street Mall
Suite 200
Honolulu, HI 96813-2715
Phone: 808.792.2022
FAX: 808.792.2033
Cell: 808.781.1660
Email: dbills@billsengineering.com
Website: www.billsengineering.com

HB-841

Submitted on: 2/1/2021 8:39:58 AM

Testimony for GVR on 2/3/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tyson Toyama	Okahara and Associates, Inc.	Oppose	No

Comments:

Representative Angus L.K. McKelvey, Chair

Representative Tina Wildberger, Vice Chair

House Committee on Government Reform

Okahara and Associates, Inc.

February 1, 2021

Opposition against H.B. No. 841, Relating to Procurement

We at Okahara and Associates, Inc. pride ourselves on providing high quality engineering consultant services and believe that H.B. No. 841 will erode our ability to do so. We subscribe to the "Qualifications-Based Selection" (QBS) model, which is the nationally recognized model procurement code for the procurement of design professional services. Hawaii's QBS law, §103D-304 has been in place for more than 20 years and works to provide quality design professional services to the public.

QBS allows consulting engineering firms like ours to provide high quality service and employ professional creativity in our services. Such services and creativity cannot be fairly priced as a part of the procurement process. Introducing lowest cost into the consultant selection evaluation process will force reputable firms to reduce its service quality and professional creativity in order to minimize consultant costs. Minimizing necessary consultant costs will result in less effective planning, integration, creativity and subsequently result in substandard Public Works Projects.

In conclusion, we oppose H.B. No. 841, Relating to Procurement and ask the committee to defer this bill. Thank you for the opportunity to testify.

HB-841

Submitted on: 2/1/2021 9:37:15 AM

Testimony for GVR on 2/3/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael P. Matsumoto	SSFM International, Inc.	Oppose	No

Comments:

Modelled after the nationally recognized model procurement code for design professional services, Hawaii's Qualifications-Based-Selection (QBS) law (103D-304) has been in-place for more than 20-years and is demonstrated to protect the State of Hawaii.

Prioritizing costs in the selection of design professional services is not practical since agencies would need to provide firms with a detailed and well-developed scope of work similar to construction contracts. This would also put the risk of the project approach on the agency rather than the design professional firm.

The current statute provides for the agency to move on to the next qualified firm if the agency and the selected firm cannot come to an agreement on design fees based on scope of work. There is no obligation of the agency to accept a fee they find too high.

Requiring agencies to prepare a scope of work that could be priced by multiple firms during the selection process would increase agency costs and effort and slow the procurement process significantly.

This bill could result in much higher overhead costs for all professional firms in Hawaii. Currently firms work with government agencies to negotiate scope and fee after they are selected as the most qualified firm. Expending scarce resources to prepare proposals for which may not be selected would be very difficult, and we may not be able to offer for all projects where we may be highly qualified.

HB-841

Submitted on: 2/1/2021 9:52:32 AM

Testimony for GVR on 2/3/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Scott Hayashi	Individual	Oppose	No

Comments:

HB-841

Submitted on: 2/1/2021 11:04:43 AM

Testimony for GVR on 2/3/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
SEAN SUGAI	Ronald N.S. Ho & Associates, Inc.	Oppose	No

Comments:

“Qualifications-based selection” (QBS) is the nationally recognized model procurement code for the procurement of design professional services. Ronald N.S. Ho & Associates, Inc. (RNSHA) is a strong supporter of HRS §103D-304, the State’s QBS law. 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. As the committee may recall, §103D-304 was strongly supported by the engineering community to provide fairness and transparency in public procurement, and to restore public faith in procurement of design professional services. §103D-304 has been in place for more than 20 years and, while several minor amendments improved the statute in the few years following its enactment, the law has not been revised since 2004, indicating that it is working.

HB841 proposes to add language stating that the selection committee may require the top ranked competing professional service offerors to submit cost or pricing data on their proposals for consideration in contract negotiation. We note that the existing statute allows for the purchasing agency to require cost information. Selection criteria (4) includes, “ (a)ny additional criteria determined in writing by the selection committee to be relevant to the purchasing agency’s needs or necessity and appropriate to ensure full, open, and fair competition for the professional services contract.”

However, prioritizing costs in the selection of design professional services is burdensome to agencies and does not provide the best outcome for the public. Firstly, to obtain fee proposals that could be compared between firms, agencies would need to provide firms with a well-developed scope of work. This would be burdensome for the agency and would also put the risk of the project approach on the agency rather than the design professional firm. Agencies typically know what they want as an outcome, but perhaps not the best way to get there. They hire the most qualified firm to help them develop/refine the scope and approach.

Secondly, the current statute provides for the agency to move on to the next qualified firm if the agency and the selected firm cannot come to an agreement on design fees. There is no obligation of the agency to accept a fee they find too high. However, requiring agencies to prepare a scope of work that could be priced by multiple firms during the selection process would increase agency costs and effort and slow the

procurement process significantly. The agency could ask for rates rather than a fee, but billing rates may not necessarily translate to total overall costs, i.e., firms with higher rates may could be more efficient and provide a lower overall cost.

Thirdly, the bill could result in much higher costs for the proposing firms. Currently, firms work with government agencies to negotiate scope and fee after they are selected as the most qualified. Multiple firms are not expending the resources to prepare proposals for which they may not be selected. These potential extra costs are critical at this time of business uncertainty and higher business costs.

Finally, the extra overhead costs may result in highly qualified firms reducing the number of projects on which they offer. This defeats the intent of qualification-based selection and may prevent the best firm from consideration for a particular project.

In conclusion, we believe this bill would slow the procurement process, result in increased costs and risks for public agencies, and increase costs for the proposing firms. Given the current economic climate and the likelihood that infrastructure projects are likely to be funded by the Federal government and a big part of our State's economic recovery, this bill would only inhibit project procurement and execution. We respectfully requests this committee uphold the good procurement law in §103D-304, and defer this bill.

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

Respectfully submitted,

Ronald N.S. Ho & Associates, Inc.

Sean Sugai, President

MAUI ARCHITECTURAL GROUP

February 1, 2021

Honorable Angus McKelvy, Chair
House Committee on Housing

RE: HB 841

Dear Chair McKelvy and Committee Members,

I am writing this testimony to OPPOSE adoption of this bill as it radically alters the QBS method of firm selection which has been in place for the past two decades. In my opinion this has worked well, displacing the corrupt 'pay to play' system of the previous century. It is a balanced approach that is designed to provide the best management practice to ensure the quality of public procurement and the protection of public expenditures.

This bill will remove the requirement that the best qualified firm *must be* the allowed the first offer to complete the project. I'm at a loss to understand why this radical change is being proposed to an excellent working process and consequently must **OPPOSE** this proposed legislation before the committee.

Sincerely,

A handwritten signature in dark ink, appearing to be 'J. Niess', with a stylized flourish extending to the right.

James Niess
Founder, Maui Architectural Group INC.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: House Committee on Government Reform

From: Cheryl Kakazu Park, Director

Date: February 3, 2021, 8:30 a.m.
Via Videoconference

Re: Testimony on H.B. No. 841
Relating to Procurement

Thank you for the opportunity to submit testimony on this bill, which would specify that a purchasing agency is not required to disclose competing cost or pricing data to any party. The Office of Information Practices (OIP) takes no position on the substance of this bill, but seeks clarification of the nondisclosure provision on page two, lines four to six and **offers an amendment** for the Committee's consideration.

The provision reads, "the purchasing agency is not required to disclose competing cost or pricing data to any party." It is not clear to OIP whether this is intended to be a confidentiality statute protecting the information both during and after completion of the procurement, or whether the intent was simply to make clear that the purchasing agency has no obligation to disclose competing cost or pricing data to other parties as part of the procurement process. **If the intent was the latter, OIP recommends replacing it with the following language, which would allow for post-procurement disclosure (upon request) of any data that would be considered public under chapter 92F, HRS, the Uniform Information Practices Act:**

provided further that the purchasing agency is not required to disclose competing cost or pricing data to any party prior to final execution of a contract, but the data shall be publicly disclosable to the extent required by chapter 92F after final execution of a contract.

Thank you for the opportunity to testify.

February 2, 2021

Honorable Angus McKelvey, Chair
House Committee on Housing

Re: House Bill 841 Relating to Procurement

Dear Chair McKelvey and Members of the Committee,

My name is Earl H. Kono, vice president of a Maui architectural firm testifying in **OPPOSITION** to House Bill 841.

Increase in cost of doing business

Most of the architectural firms on Maui are small businesses and our margins are small. The bill would require many added hours of administrative overhead costs and of our consulting engineers. State agencies have limits on our allowable overhead costs so added overhead cost to submit competing price proposals has to be recovered from other clients.

Qualifications-Based procurement

Procurement based on dollars versus professional qualifications does not result in the best design for your money. Actually, many architects who compete for public design contracts have extensive experience in majority of public buildings; thus they provide their services at most reasonable cost.

Thank you for this opportunity to **OPPOSE** House Bill 841.

Sincerely,



Earl H. Kono, AIA
Vice President
Riecke Sunnland Kono Architects, Ltd.

February 1, 2021

Subject: **HB 841, Relating to Procurement**

TESTIMONY IN OPPOSITION

Dear Legislators,

Fukunaga & Associates, Inc. is a locally owned, small business Civil Engineering firm operating in Hawaii since 1969. We are **in strong opposition to HB 841**, Relating to Procurement, which proposes to alter the qualifications-based selection (QBS) law for procurement of design professional services. The QBS procedures in HRS §103D-304 are based on the nationally recognized model procurement code for the procurement of design professional services, derived from the Brooks Act used by the Federal government since it was enacted in 1972. The Brooks Act establishes a qualification-based selection process, in which contracts for professional design firms are negotiated on the basis of demonstrated competence and qualifications for the type of professional services required at a fair and reasonable price. Under QBS procurement procedures, price quotations are not a consideration in the selection process.

Hawaii's QBS law, §103D-304 has been in place for more than 20 years and works to provide quality design professional services to the public. A major purpose of procuring the services of a design professional is to obtain a "trusted advisor" to develop the best options and ultimately the solution for the client. Unlike in construction contracts where design plans and specifications are already prepared and define the work to be performed, most often when design professional services are needed, only the problem is known and therefore it is difficult if not impossible to determine a fixed cost for the required services.

Agencies may typically know what they want as an outcome, but usually not the best way to get there. The QBS approach is to allow the agency to hire the most qualified firm to help them develop/refine the scope and approach. Developing the cost of services require flexibility in approach, often balancing risks and costs to optimize the design effort and ultimate solution.

The current statute provides for the agency to move on to the next qualified firm if the agency and the selected firm cannot come to an agreement on design fees. There is no obligation of the agency to accept a fee they find too high. Requiring agencies to prepare a scope of work that could be priced by multiple firms during the selection process would increase agency costs and effort and slow the procurement process significantly.

We feel that using price to determine the selection of design professionals will not be in the best interest of the State. Just imagine selecting your medical or legal professionals based on "low bid".

I appreciate the opportunity to provide testimony regarding this matter. Please do not hesitate to contact me should you have any questions regarding my testimony.

Very truly yours,

Jon K. Nishimura, P.E., FACEC
Fukunaga & Associates, Inc.



THE LIMTIACO CONSULTING GROUP
CIVIL ENGINEERING AND ENVIRONMENTAL CONSULTANTS

February 1, 2021

House Committee on Government Reform
Hearing Date: Wednesday, February 3, 2021, 8:30 a.m.

**Honorable Representatives Angus L.K. McKelvey, Chair; Tina Wildberger, Vice Chair;
and Members of the House Committee on Government Reform**

**Subject: HB 841, Relating to Procurement
TESTIMONY IN OPPOSITION**

Dear Chair McKelvey, Vice Chair Wildberger, and Committee Members:

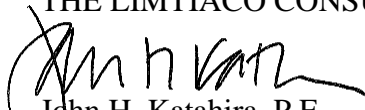
The Limtiaco Consulting Group (TLCG) is a local civil and environmental engineering firm and is proud to be voted one of Hawaii's Best Places to Work and is consistently one of the top engineering firms according to Pacific Business News. TLCG is an active member of the American Council of Engineering Companies of Hawaii and other professional engineering organizations. TLCG principals believe it is important to give back to the communities we serve through beneficial engineering projects and meaningful volunteerism.

TLCG opposes HB 841 because this bill will negatively impact our business model.

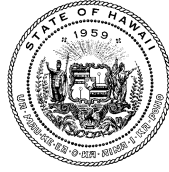
ACECH and its member firms spent countless hours developing and supporting Hawaii QBS law. When engineering firms are selected – based on qualifications – scopes of work are typically not developed with necessary detail, making it very difficult for companies to provide accurate detailed fee proposals. HB 841 suggests pricing shall be used to determine which of the three firms (minimum) is ultimately selected. This is impossible to do correctly without proper scopes of work; quality, sustainability and maintainability will be sacrificed at the cost of cheaper pricing.

Thank you for this opportunity to submit testimony. Please feel free to contact me if you have any questions.

Sincerely,
THE LIMTIACO CONSULTING GROUP, INC.


John H. Katahira, P.E.
President

DAVID Y. IGE
GOVERNOR



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
COMMITTEE ON GOVERNMENT REFORM

WEDNESDAY, FEBRUARY 3, 2021, 8:30 A.M.
CONFERENCE ROOM 309, STATE CAPITOL

H.B. 841

RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Wildberger, and members of the Committee, thank you for the opportunity to submit testimony on H.B. 841.

The Department of Accounting and General Services (DAGS) strongly opposes H.B. 841 and we offer the following:

- The intent and proposed language in H.B. 841 are already included in the Procurement Code.
- Section 103D-304(h), Hawaii Revised Statutes states: “The head of the purchasing agency or designee shall negotiate a contract with the first ranked person, including a rate of compensation which is fair and reasonable, established in writing, and based upon the estimated value, scope, complexity, and nature of the services to be rendered. If a satisfactory contract cannot be negotiated with the first ranked person, negotiations with that person shall be formally terminated and negotiations with the second ranked person on the list shall commence. The contract file shall include documentation from the head of the purchasing agency, or designee, to support

selection of other than the first ranked or next ranked person. Failing accord with the second ranked person, negotiations with the next ranked person on the list shall commence. If a contract at a fair and reasonable price cannot be negotiated, the selection committee may be asked to submit a minimum of three additional persons for the head of the purchasing agency to resume negotiations in the same manner provided in this subsection. Negotiations shall be conducted confidentially.”

- In addition, section 3-122-123, Requirement for Cost or Pricing Data, Hawaii Administrative Rules, addresses submission of cost or pricing data.
- The Hawaii Revised Statutes, Hawaii Administrative Rules, Procurement Directives, and Circulars make up the Hawaii Procurement Code. Thus, the Hawaii Procurement Code already requires that a cost proposal be provided to the head of the purchasing agency for consideration, negotiation, and determination that the cost compensation is fair and reasonable for the work performed.

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



February 1, 2021

House Committee on Government Reform
Hearing Date: Wednesday, February 3, 2021, 8:30 a.m.

Subject: HB 841, Relating to Procurement
TESTIMONY IN OPPOSITION

Dear Honorable Representatives Angus L.K. McKelvey, Chair; Tina Wildberger, Vice Chair; and Members of the House Committee on Government Reform:

As the President / CEO of a local professional engineering company, I oppose HB 841 for the following reasons:

- “Qualifications-based selection” (QBS) is the nationally recognized model procurement code for the procurement of design professional services. Hawai‘i’s QBS law, §103D-304 has been in place for more than 20 years and works to provide quality design professional services to the public.
- Prioritizing costs in the selection of design professional services is burdensome to agencies as they would need to provide firms with a well-developed scope of work. This would also put the risk of the project approach on the agency rather than the design professional firm. Agencies typically know what they want as an outcome, but perhaps not the best way to get there. They hire the most qualified firm to help them develop/refine the scope and approach.
- The current statute provides for the agency to move on to the next qualified firm if the agency and the selected firm cannot come to an agreement on design fees. There is no obligation of the agency to accept a fee they find too high. Requiring agencies to prepare a scope of work that could be priced by multiple firms during the selection process would increase agency costs and effort and slow the procurement process significantly.
- The bill could result in much higher overhead costs for our firm. Currently firms work with government agencies to negotiate scope and fee after they are selected as the most qualified. Expending scarce resources to prepare proposals for which may not be selected would be very difficult, and we may not be able to offer for all projects where we may be highly qualified. These potential extra costs are critical at this time of business uncertainty and higher costs.

Because of the aforementioned significant negative impacts, I oppose HB 841.

Please do not hesitate to contact us if you have any questions regarding this letter of opposition.

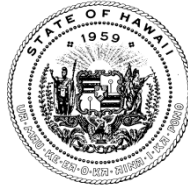
Yours truly,
Yogi Kwong Engineers, LLC

A handwritten signature in black ink that reads "Jeffrey K. Kalani". The signature is written in a cursive, flowing style.

Jeffrey Kalani, P.E.
President/CEO

Yogi Kwong Engineers, LLC
677 Ala Moana Boulevard, Suite 710
Honolulu, Hawaii 96813
Tel: 808.942.0001

DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 3, 2021
8:30 A.M.
State Capitol
Conference Room 309
VIA VIDEO CONFERENCE

H.B. 0841
RELATING TO PROCUREMENT

House Committee on Government Reform

The Department of Transportation (DOT) **supports** the bill which allows any selection committee that evaluates an engineering, architectural, surveying, or landscape architectural professional service submittal for a state or county contract to require the top ranked competing professional service offerors to submit cost or pricing data on their respective proposals; and specifies that a purchasing agency is not required to disclose competing cost or pricing data to any party.

Thank you for the opportunity to provide testimony.



AIA
Hawaii

February 3, 2021

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

FROM: **AMERICAN INSTITUTE OF ARCHITECTS**

SUBJECT: **Re: House Bill 841 Relating to Procurement**

Dear Chair McKelvey and Members of the Committee,

My name is Daniel Chun Government Affairs Commissioner of the American Institute of Architects Hawaii State Council (AIA) testifying in **OPPOSITION** to House Bill 841:

Dramatically increases business overhead "pursuit costs"

The bill would require many added hours of administrative overhead costs for multiple architect businesses and their typically 3-4 consulting engineer businesses. Added overhead cost to submit competing price proposals has to be recovered from other clients. And it has to be recovered from public agencies that use the lower overhead process of current 103D-304 subsection (h). Agencies have limit on our allowable overhead costs; above which detailed audit is prescribed.

Creates agency confusion in evaluating competing cost proposals

HB 841 lacks direction on evaluating competing price proposals. HRS 103D-303 has formula whereby agency staff have to decide points devoted to dollars versus professional qualifications. However, many architects who compete for public design contracts have extensive experience in majority of public building types; thus the award to the lowest price is almost inevitable.

If a service being procured relies on the top-ranked professional, then a process in which competing \$ fees are large factor is detrimental to long-term public interest. The language sets up initial adversarial relationship in what must be collaborative relationship.

The American Institute of Architects

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

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

Delays design contract award and subsequent construction completion

Requesting competing prices takes elapsing time of both agency staff and top-ranked architects. I recall a legislative session in mid-1990s when Senator Richard Matsuura passed design services procurement law preferring competing price proposals; but allowing process like current 103D-304 subsection (h) if agency lacked the time to request / evaluate competing proposals. Our recollection is that no agency ever found time to request / evaluate competing price proposals. It was more important to Hawaii's economy and public interest to get these buildings out to bid and constructed.

Passing HB 841 will not only increase architects' business overhead costs, but likely require more agency staff time or more public employees.

What problem is in need of solution this radical?

Agencies already budget for design services, typically based on standard percentages of appropriated construction cost. Many have published hourly fee schedules. I can tell you as an architect with over 40 years of public design contracting that there is unspoken but powerful business incentive to agree with agency price controls. Or agency will then go on to "number two."

Current process gives the state the most qualified architect for what is an "average fee." This law has stood unchanged for some 20 years; having been codified under Governor Lingle's administration. But for all decades under previous state administrations, the first price offer was only requested of the top-ranked architect.

When University of Hawaii held broad procurement. exemptions, UH agreed to fully abide with 103D-304. Same with new school facilities agency and proposed airport corporation. Over 40 states require price be first negotiated with top-ranked architect. The federal Brooks Act requires price be first negotiated with top-ranked architect if federal funds are involved.

AIA long experience following procurement law suggests revisions are made when problems such as protests need solution. Our understanding is that architecture contracts have few protests on record. In procurement law even a single word change can radically alter process. The few proposed sentences in HB 841 change procurement law for the worse. Thank you for this opportunity to **OPPOSE** House Bill 841.



February 1, 2021

House Committee on Government Reform
Hearing Date: Wednesday, February 3, 2021, 8:30 a.m.

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Honorable Representatives Angus L.K. McKelvey, Chair; Tina Wildberger, Vice Chair; and Members of the House Committee on Government Reform

Subject: **HB 841, Relating to Procurement**
TESTIMONY IN OPPOSITION

Dear Chair McKelvey, Vice Chair Wildberger, 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 and the food we eat; the safety of our buildings, highways, bridges, and infrastructure; and the quality of the environment in which we work and play. Procurement of design professional services by licensees regulated under HRS §464 is a serious undertaking.

“Qualifications-based selection” (QBS) is the nationally recognized model procurement code for the procurement of design professional services. ACECH is a strong supporter of HRS §103D-304, the State’s QBS law. 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. §103D-304 has been in place for more than 20 years and, while several minor amendments improved the statute in the few years following its enactment, the law has not been revised since 2004, indicating that it is working.

HB841 proposes to add language stating that the selection committee may require the top ranked competing professional service offerors to submit cost or pricing data on their proposals for consideration in contract negotiation. We note that the existing statute allows for the purchasing agency to require cost information. Selection criteria (4) includes, “ (a)ny additional criteria determined in writing by the selection committee to be relevant to the purchasing agency’s needs or necessity and appropriate to ensure full, open, and fair competition for the professional services contract.”

However, prioritizing costs in the selection of design professional services is burdensome to agencies and does not provide the best outcome for the public. Firstly, to obtain fee proposals that could be compared between firms, agencies would need to provide firms with a well-developed scope of work. This would be burdensome for the agency and would also put the risk of the project approach on the agency rather than the design professional firm. Agencies typically know what they want as an outcome, but perhaps not the best way to get there. They hire the most qualified firm to help them develop/refine the scope and approach.



Secondly, the current statute provides for the agency to move on to the next qualified firm if the agency and the selected firm cannot come to an agreement on design fees. There is no obligation of the agency to accept a fee they find too high. However, requiring agencies to prepare a scope of work that could be priced by multiple firms during the selection process would increase agency costs and effort and slow the procurement process significantly. The agency could ask for rates rather than a fee, but billing rates may not necessarily translate to total overall costs, i.e., firms with higher rates may be more efficient and provide a lower overall cost.

Thirdly, the bill could result in much higher costs for our firms. Currently, firms work with government agencies to negotiate scope and fee after they are selected as the most qualified. Multiple firms are not expending the resources to prepare proposals for which they may not be selected. These potential extra costs are critical at this time of business uncertainty and higher business costs.

Finally, the extra overhead costs may result in highly qualified firms reducing the number of projects on which they offer. This defeats the intent of qualification-based selection and may prevent the best firm from consideration for a particular project.

In conclusion, we believe this bill would slow the procurement process, result in increased costs and risks for public agencies, and in increased costs for our firms. Given the current economic climate and the likelihood that infrastructure projects are likely to be funded by the Federal government and a big part of our State's economic recovery, this bill would only inhibit project procurement and execution. ACECH respectfully requests this committee uphold the good procurement law in §103D-304, and defer this bill.

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

Garret A. Masuda

Garret Masuda, P.E.
President

HB-841

Submitted on: 2/2/2021 8:21:19 AM

Testimony for GVR on 2/3/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Janice Marsters	Hart Crowser	Oppose	No

Comments:

Honorable Representatives:

Rigorous and defensible procurement policy is essential to maintain public trust in government. Qualification-based selection is the national standard for procurement of design professional services, and Hawaii's QBS law has been in place for more than 20 years. You may recall that, prior to its enactment, there were cases of corruption and campaign spending violations involving local firms in winning work. Those issues were eliminated by our QBS law.

Prioritizing costs in the selection of design professional services would increase the risk and costs for the government agency. Agencies typically know what they want as an outcome, but perhaps not the best way to get there. They hire the most qualified firm to help them develop/refine the scope and approach. Requiring agencies to develop a scope necessary for bidding and comparing costs would only slow down the procurement process.

It would also increase costs for our design firms at a time when that would be very detrimental for our businesses. Currently firms work with government agencies to negotiate scope and fee after they are selected as the most qualified. Expending scarce resources to prepare proposals for which may not be selected would be very difficult, and we may not be able to offer for all projects where we may be highly qualified. The current statute provides for the agency to move on to the next qualified firm if the agency and the selected firm cannot come to an agreement on design fees. There is no obligation of the agency to accept a fee they find too high.

At a time when Federal recovery funding is likely to focus on infrastructure spending, we do not want to see any changes to the QBS law that would slow down procurement of engineering and architecture services.

Thank you for the opportunity to testify.

Janice Marsters, Managing Principal, Hart Crowser Hawaii

February 2, 2021

Subject: **HB 841, Relating to Procurement**
TESTIMONY IN OPPOSITION

Dear Committee Members,

Coffman Engineers is a multi-discipline engineering firm with over 50 employees in Hawaii and has been in operation for over 40 years. We are in strong opposition to HB 481 which would weaken the Qualifications Based Section (QBS) by allowing cost to be a greater factor in the selection process.

For the past 20 years, Hawaii's QBS law §103D-304 has been in place to help ensure that the public receives quality design professional services. QBS is a nationally recognized model procurement code for the procurement of design professional services and ensures that the contracts for design professional services are provided by the best qualified design professional for each project at a fair fee.

Agencies typically know what they want to achieve from a project, but not always the best way to get there. The QBS process allows the most qualified firms to work with the agency to develop and refine the scope and approach required. This approach allows the agency to shift risk onto the design professional and saves the agency time that would be required to develop a detailed scope of work that would be required for a low bid procurement process.

The existing §103D-304 QBS process allows for the agency to move on to the next qualified firm if the agency and the selected firm cannot come to an agreement on design fees. There is no obligation for the agency to accept a fee that they find too high. This process frees the agency from the cost and risk of having to develop a detailed scope of work that can be priced by multiple firms.

HB841 would result in much higher overhead costs for our firm. Currently we work with government agencies to negotiate scope and fee after being selected as the most qualified. The proposed change would require us to prepare proposal for which we may not be selected and would be burdensome to our firm. This could also result in projects going to firms that are not the most qualified for that project.

We oppose HB841 because we feel it is not in the best interest of the State as it would result in increased costs and risks for public agencies, and increased costs for our firm.

Thank you for the opportunity to testify about this bill. Please contact me with any questions.

Sincerely,



Jeremy Dow, P.E.
Coffman Engineers

LATE

HB-841

Submitted on: 2/2/2021 11:43:04 AM

Testimony for GVR on 2/3/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ikaika Kincaid	Individual	Oppose	No

Comments:

- “Qualifications-based selection” (QBS) is the nationally recognized model procurement code for the procurement of design professional services. Hawaii’s QBS law, §103D-304 has been in place for more than 20 years and works to provide quality design professional services to the public.
- Prioritizing costs in the selection of design professional services is burdensome to agencies as they would need to provide firms with a well-developed scope of work. This would also put the risk of the project approach on the agency rather than the design professional firm. Agencies typically know what they want as an outcome, but perhaps not the best way to get there. They hire the most qualified firm to help them develop/refine the scope and approach.
- The current statute provides for the agency to move on to the next qualified firm if the agency and the selected firm cannot come to an agreement on design fees. There is no obligation of the agency to accept a fee they find too high. Requiring agencies to prepare a scope of work that could be priced by multiple firms during the selection process would increase agency costs and effort and slow the procurement process significantly.
- The bill could result in much higher overhead costs for our firm. Currently firms work with government agencies to negotiate scope and fee after they are selected as the most qualified. Expending scarce resources to prepare proposals for which may not be selected would be very difficult, and we may not be able to offer for all projects where we may be highly qualified. These potential extra costs are critical at this time of business uncertainty and higher costs.