

DAVID Y. IGE  
GOVERNOR



BONNIE KAHAKUI  
ACTING ADMINISTRATOR

**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

P.O. Box 119  
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TESTIMONY  
OF  
BONNIE KAHAKUI, ACTING ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE  
ON  
GOVERNMENT REFORM

March 16, 2022; 9:00 AM

SENATE BILL 2385 SD2  
RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Wildberger, and members of the committee, thank you for the opportunity to submit testimony on SB2385 SD2. The State Procurement Office (SPO) supports this bill and 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Due to the results of the *Asato v. Procurement Policy Board* ruling by the Hawaii Supreme Court, HAR § 3-122-66 was repealed on June 15, 2016.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.

The SPO supports SB2385 SD2 to increase government efficiency and to provide flexibility in securing professional services when an agency receives less than three qualified persons responses.

Thank you.

DAVID Y. IGE  
GOVERNOR



**TESTIMONY BY:**

JADE T. BUTAY  
DIRECTOR

Deputy Directors  
ROSS M. HIGASHI  
EDUARDO P. MANGLALLAN  
PATRICK H. MCCAIN  
EDWIN H. SNIFFEN

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

March 16, 2022  
9:00 a.m.  
State Capitol, Teleconference

**S.B. No. 2385, S.D. 2  
RELATING TO PROCUREMENT**

House Committee on Government Reform

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The Department of Transportation (DOT) **provides comments** to this bill.

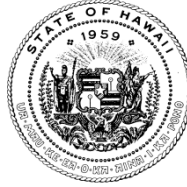
S.B. No. 2385, S.D. 2 proposes that if less than three qualified persons are available, the agency may submit a request for “alternative procurement approval” from the chief procurement officer or designee.

Hawaii Revised Statute, Chapter 103D-301, lists procurement methods as competitive sealed bids, competitive sealed proposals, professional services procurement, small purchases, sole source procurement, and emergency procurement. Solicitations are posted on the State Procurement Office’s HANDS (Hawaii Awards & Notices Data System) for a minimum 30 calendar days, providing all firms adequate time to offer submittals. The DOT believes resoliciting professional services using an alternative procurement will not guaranty additional persons and will only cause project delay.

DOT proposes amendment to S.B. No. 2385, S.D. 2 allowing “If less than three persons are available, the agency may proceed with two or fewer persons, provided that the agency determines in writing that it is in the best interests of the State to proceed with fewer than three persons.”

Thank you for the opportunity to provide testimony.

DAVID Y. IGE  
GOVERNOR



REVISED TESTIMONY BY:

JADE T. BUTAY  
DIRECTOR

Deputy Directors  
ROSS M. HIGASHI  
EDUARDO P. MANGLALLAN  
PATRICK H. MCCAIN  
EDWIN H. SNIFFEN

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

March 16, 2022  
9:00 AM

State Capitol, Conference Room 309/Teleconference

**S.B. 2385, S.D. 2  
RELATING TO PROCUREMENT**

House Committee on Government Reform

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The Department of Transportation **strongly supports** this bill that allows agencies procuring professional services to request an exemption from Chapter 103D, Hawaii Revised Statutes, if fewer than three qualified persons submit statements of qualifications.

The Department supports the qualifications based process, and follow its provisions for all consultant selections for both state and federal funding. For the majority of our initiatives, we do not have issues with receiving at least three qualifications that have been deemed responsive. However, there have been request for qualifications that were issued multiple times because we could not receive the minimum three qualifications. In these instances, the state was unnecessarily delayed in its processes due to lack of interest or expertise in the offering.

In these situations, the state should have the flexibility of moving forward with less than three qualified submittals if it is in the best interest of the state. We believe the language in the bill provides the state the flexibility to move forward efficiently while requiring transparency and accountability for its decisions.

Thank you for the opportunity to provide testimony.

# DEPARTMENT OF FINANCE

REIKO MATSUYAMA, DIRECTOR

MICHELLE L. LIZAMA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR  
MICHAEL A. DAHLIG, MANAGING DIRECTOR

**Testimony of Reiko Matsuyama**  
Director of Finance, County of Kaua'i

Before the  
**Committee on Government Reform**  
March 16, 2022 at 9:00 am  
Conference Room 309

In consideration of  
**Senate Bill 2385 SD2**  
**Relating to Procurement**

Honorable Chair McKelvey, Vice Chair Wildberger, and Members of the Committee:

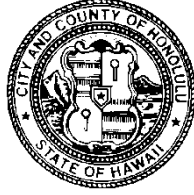
The Finance Department of the County of Kaua'i **supports** SB 2385 SD2, which allows greater flexibility for engaging in a professional services contract if we are unable to obtain three qualified responses. The Asato v. Procurement Policy Board ruling made it very difficult for us to timely move forward on many professional service initiatives.

Being that Kauai is a small market, many of the services required to fulfill County functions are unavailable on the island. There have been times when we have not been able to move forward with a service award at all because of the current restrictions. Other times, we have had to resolicit multiple times until three responses were received.

This has created a substantial number of inefficiencies and delays which have hampered necessary County functions and adversely impacted the people of our community who are ultimately the beneficiaries of these services.

It is for these reasons, that we **support** SB 2385 SD2. Thank you for your consideration of this testimony.

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  
**March 16, 2022, 9:00 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 SENATE BILL 2385, SD2, RELATING TO PROCUREMENT

The Department of Budget and Fiscal Services, City and County of Honolulu (City), **supports** Senate Bill (SB) 2385, SD2, Relating to Procurement.

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.

The City has one comment to offer, to amend HRS §103D-102(b)(4)(L):

“(L) Any other goods or services which the policy board determines by rules or the chief procurement officer determines in writing is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State; or any professional services pursuant to section 103D-304(g); and”

In accordance with HRS §103D-104, *Definitions*:

“Services” means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.

“Professional Services” means those services within the scope of the practice of architecture, landscape architecture, professional engineering, land surveying, real property appraisal, law, medicine, accounting, dentistry, public finance bond underwriting, public finance bond investment banking, or any other practice defined as professional by the laws of this State or the professional and scientific occupation series contained in the United States Office of Personnel Management's Qualifications Standards Handbook.

For the reasons stated above, the City respectfully supports Senate Bill 2385, SD2.

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](mailto:bfspurchasing@honolulu.gov).

# ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES  
of Hawaii

50 Years of Excellence

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March 15, 2022

## **House Committee on Government Reform**

**Hearing Date: Wednesday, March 16, 2022, 9:00 a.m.**

Honorable Chair McKelvey, Vice Chair Wildberger, and Members of the  
House Committee on Government Reform

Subject: **SB 2385 SD2, Relating to Procurement**

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 provides **comments** to this bill.

ACECH is still interested in working with the stakeholders to find a solution,  
but we have concerns with the proposed language for the following reasons:

1. The language of 103D-102(b)(4)(L) seems to contradict this particular  
need because it references the chief procurement officer determining in  
writing there are multiple sources available;
2. We would like to see the same measure of reporting that occurs in  
103D-304. The reporting requirements of 103D-304 provides  
transparency and helps to safeguard against corruption. We previously  
proposed reporting language, but it was not incorporated.

We appreciate the opportunity to provide testimony on this matter. Please  
contact us if you have any questions.

Respectfully submitted,  
AMERICAN COUNCIL OF ENGINEERING COMPANIES OF HAWAII



Derek Mukai, P.E.  
President



March 16, 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: Senate Bill 2385 SD2  
Relating to Procurement**

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](http://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 the current language of Senate Bill 2385 SD2. AIA objection is based on:

**Lack of detail on project-based qualifications response problems and from which State Agencies:**

1. Although supporting agencies such as the University of Hawaii testifies that "Because this [less than three] is not an uncommon occurrence, allowing agencies to proceed with the solicitation upon approval serves the best interest of the state." We have no specifics that better support such testimony; such as how many projects have been delayed in sample fiscal year(s). Without detailed knowledge of the problem, it is difficult to legislate / design the good solution.
2. City & County of Honolulu offered alternate language "(g) The selection committee shall rank a minimum of three persons based on the selection criteria and send the ranking to the head of the purchasing agency.; provided that if fewer than three qualified persons submit bids or proposals, the agency may submit a request for alternative procurement approval from the chief procurement officer or designee, except for design professional services furnished by licensees under chapter 464." The underscored text strongly suggests that architect-engineer services are not a problem and that WAM SSCR 2931 is not aligned in categorizing Honolulu testimony as supportive with respect to design professional services. Again, more detail of which professional services give rise to "less than three" problems will help. All other professional services can be procured under broad range of sections in Hawaii Procurement Code. AIA would like to specifically



reiterate that Honolulu-based design professional services contracts were the source of Asato v. PPB decision, so it is gratifying to read Honolulu's "opposing" testimony.

**Exemption pursuant to section 103D-102(b)(4)(L) is a problem:**


1. Exemption leaves both private sector small businesses and state-wide public agency staffers "in the dark" as to what procedures will be used. AIA fears exemptions could increase business overhead costs and more open to corruption while disregarding carefully-crafted selection criteria.
2. Both "exemption" and "alternate procurement" may actually delay award of contracts because procedures are yet to be invented. AIA strongly opposes Procurement Policy Board PPB be allowed to write rules because this legislature is the more transparent / democratic method at balancing needs of private business vs. agency administrative needs.
3. Plain reading of 103D-102 suggests it be reserved for procurement of incredibly unique services such as works of art or provisions for Kalaupapa Settlement. Design professional services, while important, are more readily available from many sources. AIA has about 180 private firms among our membership, a workforce that has supported a large portion of the AEC industry in the State through the pandemic and is in support of more opportunities, not less / more unique.

**AIA opposes amending subsection (g):**

1. In past testimony, AIA has no recorded information of agency problems of "less than three persons" from State agencies. Hence AIA strongly opposes amending the "main body" of the statute that interrupts long-established sequential process for great majority of AE qualification-based selection contracts.
2. Based on better statistical information, AIA might have less objection to dedicated new subsection. Any new language must serve as sequential process that adheres to the existing main body of statute.

Thank you for this opportunity to **STRONGLY OPPOSE** Senate Bill 2385 SD2.

Sincerely,



Reid Mizue, AIA

American Institute of Architects, Hawaii State Council

**SB-2385-SD-2**

Submitted on: 3/15/2022 8:26:31 AM

Testimony for GVR on 3/16/2022 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Sandie Wong	Individual	Comments	Remotely Via Zoom

Comments:

I support the comments of the American Council of Engineering Companies - Hawaii and encourage the stakeholders to continue to discuss to resolve any lingering concerns about language. Thank you.