



**STATE OF HAWAI'I | KA MOKU'ĀINA O HAWAI'I**  
**STATE PROCUREMENT OFFICE**

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TESTIMONY  
OF  
BONNIE KAHAKUI, ACTING ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE  
ON  
LABOR & GOVERNMENT OPERATIONS  
February 14, 2023; 9:30 a.m.

HOUSE BILL 1184  
RELATING TO PROCUREMENT

Chair Matayoshi, Vice Chair Garrett, and members of the committee, thank you for the opportunity to submit testimony on House Bill 1184. The State Procurement Office (SPO) provides the following comments and recommendations:

This bill provides direction when the requisite number of responses are not received while conducting the professional services method of procurement. The bill explains that the statute as currently written "forces the procuring official to continue expending time and resources to fulfill the solicitation and, if the requisite number or responses is never received, leaves the agency no options to proceed.

The bill contradicts the intent which is to save time and resources. The bill amends Section 103D-304, Hawaii Revised Statutes subsection (g) by adding:

"If fewer than three qualified persons respond to a solicitation that has been posted for at least thirty days and in accordance with subsection (b), with qualifications assessed in accordance with subsection (c), the purchasing agency shall: (1) Post another solicitation for at least another thirty days, which may be identical or modified;

1. The statue does not impose a specific number of days that a professional services notice must be posted. Thirty days may not be necessary in certain situations.
2. There is no guarantee that another thirty days posting will provide for additional names, especially if the notice is identical to the first notice.

Furthermore, the purpose of the bill is to allow agencies to rank fewer than three persons when fewer than three qualified persons respond to the solicitation or request to use alternative procurement procedures when no qualified person responds to the solicitation.

The bill requires that if the purchasing agency ranks fewer than three persons, "the purchasing agency shall issue a notice of the *intent to award* a contract for five working days." Inclusive of issuing a notice of the intent to award, the bill allows for a protest period pursuant to section 103D-701. HRS 103D-701 allows an aggrieved to protest *an award*. The bill is confusing, and these multiple steps of allowing for protest pre-negotiation and then again upon award contradicts the intent of the bill, which is to save time and resources

Hawaii Revised Statutes chapter 103D-304 (j) already provides direction and allows contracts for professional services of less than the limits in section 103D-305, may be negotiated by the head of the purchasing agency, or designee, with at least any two persons on the list of qualified persons.

This bill is unnecessary based on data for the Executive Branch that in the last ten years, there have been no requests for waiver or exemption to conduct negotiations because less than three qualified persons have been received for a professional services procurement.

If the intent of the legislature is to allow agencies the ability to award a professional services contract when less than three qualified persons respond to a notice, then the SPO recommends the following language:

Section 103D-304, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(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. 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. The contract file shall contain a copy of the summary of qualifications for the ranking of each of the persons provided to the head of the purchasing agency for contract negotiations. If more than one person holds the same qualifications under this section, the selection committee shall rank the persons in a manner that ensures equal distribution of contracts among the persons holding the same qualifications. The recommendations of the selection committee shall not be overturned without due cause."

Thank you.



**UNIVERSITY OF HAWAII SYSTEM**

**‘ŌNAEHANA KULANUI O HAWAII**

Legislative Testimony

Hō'ike Mana'o I Mua O Ka 'Aha'ōlelo

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Testimony Presented Before the  
House Committee on Labor and Government Operations  
February 14, 2023 at 9:30 a.m.

By

Jan Gouveia

Vice President for Administration  
University of Hawai'i System

HB 1184 – RELATING TO PROCUREMENT

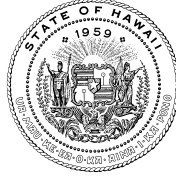
Chair Matayoshi, Vice Chair Garrett, and Members of the Committee:

The University of Hawai'i is in support of HB 1184 which allows agencies to proceed with two or fewer qualified persons in the procurement of professional services, provided that the purchasing agency posts a notice of intent to award for five working days.

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 upon posting a notice of intent to award for five working days is in the best interest of the state.

Thank you for the opportunity to testify in support of HB 1184.

JOSH GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA



KEITH A. REGAN  
COMPTROLLER  
KA LUNA HO'OMALU HANA LAULĀ

MEOH-LENG SILLIMAN  
DEPUTY COMPTROLLER  
KA HOPE LUNA HO'OMALU HANA LAULĀ

**STATE OF HAWAII | KA MOKU'ĀINA O HAWAII**  
**DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES | KA 'OIHANA LOIHELU A LAWELAWE LAULĀ**  
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY  
OF  
KEITH A. REGAN, COMPTROLLER  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
TO THE  
COMMITTEE ON LABOR AND GOVERNMENT OPERATIONS

FEBRUARY 14, 2023, 9:30 AM  
CONFERENCE ROOM 309 AND VIA VIDEOCONFERENCE, STATE CAPITOL

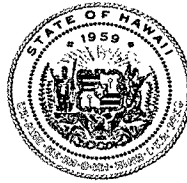
H.B. 1184

RELATING TO PROCUREMENT.

Chair Matayoshi, Vice Chair Garrett, and members of the Committee, thank you for the opportunity to submit testimony in support of House Bill (H.B.) 1184 which allows agencies to rank fewer than three persons for professional services when fewer than three qualified persons respond to the solicitation or request to use alternative procurement procedures when no qualified person responds to the solicitation.

These provisions will allow state agencies to fulfill the purposes of solicitations fairly and transparently without the unnecessary excessive expenditure of time and state resources that now stymies our projects.

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



**TESTIMONY BY:**  
EDWIN H. SNIFFEN  
DIRECTOR

Deputy Directors  
DREANALEE K. KALILI  
TAMMY L. LEE  
ROBIN K. SHISHIDO  
JAMES KUNANE TOKIOKA

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

Tuesday, February 14, 2023  
9:30 A.M.  
State Capitol  
VIA VIDEOCONFERENCE  
Conference Room 225

**H.B. 1184  
RELATING TO PROCUREMENT**

House Committee on Labor & Government Operations

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The Department of Transportation (DOT) **supports** this measure that would allow agencies to rank fewer than three persons for professional services when fewer than three qualified persons respond to the solicitation or request to use alternative procurement procedures when no qualified person responds to the solicitation.

The Department supports the qualifications-based process and follows 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. 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 submittals if it is in the best interest of the state. We believe the language in this measure provides the state the flexibility to move forward efficiently while demonstrating transparency and accountability for its decisions.

However, while the DOT supports this measure, a recommendation would be to follow the existing procurement code exemption process and proposes the following revision to Hawaii Revised Statutes, 103D-304(g):

(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. If fewer than three persons respond to a notice to providers of professional services, the agency may submit a request to the chief procurement officer to allow the ranking of less than three persons and to proceed with selection and contract award under the provisions of this chapter. The contract file shall contain a copy of the summary of qualifications for

the ranking of each of the persons provided to the head of the purchasing agency for contract negotiations. If more than one person holds the same qualifications under this section, the selection committee shall rank the persons in a manner that ensures equal distribution of contracts among the persons holding the same qualifications. The recommendations of the selection committee shall not be overturned without due cause.

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 Ernest W. Barreira

Assistant Chief Procurement Officer, Division of Purchasing  
Department of Finance, County of Kaua'i

Before the  
**House Committee on Labor & Government Operations**

February 14, 2023; 9:30 a.m.  
Conference Room 309 & Via Videoconference

In consideration of  
**House Bill 1184**  
**Relating to Procurement**

Honorable Chair Matayoshi, Vice Chair Garrett, and Members of the Committee:

The County of Kaua'i is in **support** of House Bill 1184, which allows agencies to rank fewer than three persons for professional services when fewer than three qualified persons respond to the solicitation or request to use alternative procurement procedures when no qualified person responds to the solicitation.

The Asato v. Procurement Policy Board ruling made it very difficult for us to timely move forward on many professional service initiatives and many times left our County departments and agencies unable to award and contract consulting initiatives vital to our County. This adversely impacted the people of our community who are ultimately the beneficiaries of these services.

As Kaua'i 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. The current bill ensures the structural and procedural adherence consistent with the statute that governs professional services per HRS 103D-304. And at the same time, the bill provides the means for State and County departments and agencies to seek both repetitive and alternative means to award these critical services to those professional engineers, consultants and architects who have been deemed qualified to provide these vital services. The posting and notice requirements as noted in the bill clearly meets the transparency, accountability, and ethical expectations that are asserted through the procurement code. This will promote and ensure fairness in the review, evaluation, selection, award, and contracting processes.

We have reviewed the opposition testimony that was submitted when this bill was presented during the last session. We are sensitive to the issues raised by the professional consultants and believe we have responsibly addressed these concerns within the body of House Bill 1184. The content of the bill ensures the integrity of the professional services process, and incorporates definitive due process and responsible checks and balances to preserve the ethical obligations of government in the award and contracting processes.

It is for these reasons, that we **support** HB 1184. Thank you for your consideration of this testimony.



February 13, 2023

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**House Committee on Labor & Government Operations**  
**Hearing Date: Thursday, February 14, 2023, 9:30 a.m.**

Honorable Chair Matayoshi, Vice Chair Garrett, and Members of the House  
Committee on Labor & Government Operations

**Subject: HB 1184, Relating to Procurement; Professional Services; Ranking:  
Qualified Persons  
Comments**

Dear Chair Matayoshi, Vice Chair Garrett, 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 the following comments on this bill.

ACECH understands that a small number of projects solicited for professional services, pursuant to section 103D-304, does not receive the requisite number of responses and they must continue to re-solicit these projects. In the last legislative session, ACECH worked with stakeholders to attempt to draft language amenable to both parties. ACECH's main concern is in regard to inadvertent erosion of the qualification-based selection process.

ACECH suggests the following language revisions to require that a solicitation be re-posted for a minimum of 30-days along with the published notice that the agency intends to move forward with ranking fewer than three persons.

- (1) *Post another solicitation for at least another thirty days, which may be identical or modified; ~~or~~ **and***
- (2) *Publish a notice that the agency intends to move forward with ranking fewer than three persons;*

ACECH also requests clarification on what "alternative procurement procedures" entail.

Respectfully submitted,  
AMERICAN COUNCIL OF ENGINEERING COMPANIES OF HAWAII

Kyle Kaneshiro, P.E.  
President-Elect





February 13, 2023

TO: Honorable Scott Matayoshi, Chair  
House Committee on Labor & Government Operations

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

SUBJECT: **Re: House Bill 1184  
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 Matayoshi and Members of the Committee,

My name is Reid Mizue VP/President-elect AIA Hawaii Council testifying in **CONSTRUCTIVE OPPOSITION** to the current language of House Bill 1184; specifically:

**Authorizing “fewer than three” makes statute in conflict with itself.**

Currently subsection (b)(1) requires additional notice if response to initial notice is inadequate. With “fewer than three” being authorized by HB 1184, means that if no persons respond to the first notice – no additional notice is required [DOT excepted]. An agency may then proceed to alternate procurement such as direct negotiations. This seems potentially corruptible in a repeat of the turn-of-the-century controversy surrounding award of design professional public contracts for campaign contributions. AIA is extremely concerned because we as design professional services providers do not desire to see a repeat of misuse resulting in punishable offenses.

**Reliance on HRS 103D-102(b)(4) contravenes Hawaii Supreme Court ruling in Asato case.**

“Accordingly, the factual situation of less than three qualified persons under the Board's rule HAR § 3-122-66, cannot be rationalized as an unenumerated exception within the scope of HRS § 103D-102(b)(4).” Based on doctrine of *ejusdem generis*, exemption for less than three qualified persons cannot be construed in connection with the list of items (A) through (K) preceding it. Items (A) through (K) enumerate specific types of goods or services **[professional services are not specifically enumerated]**, whereas less than three qualified persons is a particular **factual situation** – not a good or service.

Hawaii Supreme Court No. SCAP-12-0000789 O2-14-2014

**Suggested subsection (g) updates within HB 1184 still has language concerns. AIA objections will be satisfied with new “bright light” subsection in 103D-304:**

- If legislated into 103D-304 as public policy, it is “sunshine law” governing design professional services procurement that has had history of public corruption.
- It is all the authority needed for contract consideration for two persons, one person or even if no person applies; using direct negotiations. Language is not an “exemption” nor an “exception.” It is a “**factual situation**” predicament that public agencies testify they find themselves in due to occasional lack of private sector response.
- Language sets minimum number of solicitation notices as “threshold” for “fewer than three” approval by **State Procurement Office using existing HAR 3-120-5 workflow.**
- Dedicated subsection (k), with “bright light” sequential agency procedures, allowing the rest of 103D-304 to stand unamended as 2003 reform law meeting the “gold standard” for procuring design professional service contracts.
- May be immediately operational without procurement directives or rules.

There has been insufficient opportunity to craft perfect language. Hence the bill should properly be deferred OR working group be assembled before 2024 session to advance any “glitch bill” required. There is also opportunity for refinement using conference committee process.

Thank you for this opportunity to **CONSTRUCTIVELY OPPOSE** current language of House Bill 1184 by offering language below:

Sincerely,  
American Institute of Architects, Hawaii State Council

**Note:**

(See following page for suggested Language, benefitting all parties.)

### PROPOSED HD 3 LANGUAGE FOR DEDICATED SUBSECTION

(k)<sup>1</sup> For a factual situation in which fewer than three persons qualified under state law<sup>2</sup> respond to the additional notice of need in subsection (b)<sup>3</sup> that has been posted for at least 30 days; the purchasing agency may request State Procurement Office approval to proceed under rules adopted by the policy board.<sup>4</sup> The request shall include the dates of all solicitation notices and names of persons on the list of subsection(c); including situation in which no person responds.<sup>5</sup> Submissions shall then be evaluated by the selection committee in accordance with subsections (d), (e) and (f).

(1) For two persons, the selection committee shall rank them based on the criteria in subsection (e). If both persons hold the same qualifications, the selection committee shall rank the persons in a manner that ensures equal distribution of contracts among persons holding the same qualifications. The ranking shall be sent to the head of the purchasing agency for negotiations conducted in the manner set forth in subsection (h). The rankings of the selection committee shall not be overturned without due cause.

(2) For only one person; the selection committee shall first evaluate qualifications and may then send the name to the head of the purchasing agency to negotiate a contract at a fair and reasonable price.<sup>6</sup>

(3) For a situation in which no person responds, the head of the purchasing agency may determine that there is only one source for the required service and engage in direct negotiations with a qualified person.<sup>7</sup> For any contract to be awarded, the purchasing agency shall issue a "Notice of Sole Source" at least seven days prior to awarding a contract.<sup>8</sup> Persons may file written objections to the issuance of a contract within seven days. Rules of the policy board shall provide for the disposition of objections, including a written summary of the disposition. The written determination, any objection, past performance evaluations relied upon, and a written summary of the disposition of any objection shall be included in the contract file. The written determination shall contain such information as the rules of the policy board require.<sup>8</sup>

Every agency shall report to State Procurement Office all of the contracts awarded under this subsection in the previous fiscal year.<sup>9</sup>

**KAUAHIKAUA & CHUN ARCHITECTS**  
**3456 Kaimuki Avenue**  
**Honolulu, Hawaii 968 16**

February 14, 2023

Honorable Scot Z. Matayoshi, Chair  
Honorable Andrew Takuya Garrett , Vice-Chair  
House Committee on Labor and Government Operations

Re: **House Bill 1184**  
**Relating to Procurement**

Dear Chair Matayoshi, Vice-Chair Garrett and Members of the Committee,

I am Daniel Chun, partner of Kauahikaua & Chun Architects. I **STRONGLY OPPOSE** current language of House Bill 1184 that adversely modifies subsection (g). My concerns will be lessened with new dedicated subsection (k) having following positive features:

1. Legislate “bright light” sequential agency procedures, allowing subsection (g) to stand unamended as 2003 reform law; much-preferred “minimum of three persons” public policy for procuring design professional services.
2. Situates “less than three” just following subsection (k) that allows “at least any two” under certain conditions. I lack information as to how often subsection (k) is used. You might consider increasing dollar value of small purchases in 103D-305, if this would relieve some problems. Written in 2002 with smaller agencies such as counties in mind. Dollar value is governed in separate procurement section to maintain 103D-304 as kind of inviolate statute. QBS law is “third rail” of architect political advocacy.
3. Considers “less than three”, not as an “exemption”, but as “factual situation” directly caused by lack of response on part of the private sector; not public agency corruptible intent.
4. Builds upon stakeholder discussions that progressed in 2022 session. These were intently focused on making clear sequential procedures for private and public parties.

I was actively involved in language of 103D-304 some 20 years ago to reform procurement of design professional services in response to public corruption. I am deeply concerned over this bill that “messes up” the sequential steps of subsection (g) with lots of language that ought to be used only in very rare situations.

I call your attention to attached past proposal by AIA for dedicated subsection. In procurement law, every single word that is changed can have big consequences. Explanatory notes for 2022 AIA testimony are omitted, but can be found in legislative records. Just one example, “**qualified under state law**” is used to prevent agencies from disqualifying any design professional applicant for contract by agency subjective decision of “unqualified.” Bear in mind that Review

Committees make potentially corruptible decisions without public oversight. That's what triggered Asato decision. This bill also has no such preventative language

### **Attached to American Institute of Architects testimony to House Finance for Senate Bill 2385 HD2 (2022 session) and needing more stakeholder discussion**

(k)<sup>1</sup> For a factual situation in which fewer than three persons qualified under state law<sup>2</sup> respond to the additional notice of need in subsection (b)<sup>3</sup> that has been posted for at least 30 days; the purchasing agency may request State Procurement Office approval to proceed under rules adopted by the policy board.<sup>4</sup> The request shall include the dates of all solicitation notices and names of persons on the list of subsection(c); including situation in which no person responds.<sup>5</sup> Submissions shall then be evaluated by the selection committee in accordance with subsections (d), (e) and (f).

(1) For two persons, the selection committee shall rank them based on the criteria in subsection (e). If both persons hold the same qualifications, the selection committee shall rank the persons in a manner that ensures equal distribution of contracts among persons holding the same qualifications. The ranking shall be sent to the head of the purchasing agency for negotiations conducted in the manner set forth in subsection (h). The rankings of the selection committee shall not be overturned without due cause.

(2) For only one person; the selection committee shall first evaluate qualifications and may then send the name to the head of the purchasing agency to negotiate a contract at a fair and reasonable price.<sup>6</sup>

(3) For a situation in which no person responds, the head of the purchasing agency may determine that there is only one source for the required service and engage in direct negotiations with a qualified person.<sup>7</sup> For any contract to be awarded, the purchasing agency shall issue a "Notice of Sole Source" at least seven days prior to awarding a contract.<sup>8</sup> Persons may file written objections to the issuance of a contract within seven days. Rules of the policy board shall provide for the disposition of objections, including a written summary of the disposition. The written determination, any objection, past performance evaluations relied upon, and a written summary of the disposition of any objection shall be included in the contract file. The written determination shall contain such information as the rules of the policy board require.<sup>8</sup>

Every agency shall report to State Procurement Office all of the contracts awarded under this subsection in the previous fiscal year.<sup>9</sup>

Above language needs more tweaking because Sole Source contracts are limited in time and dollar value. And use of proposed (k) (3) is not actually "sole source" because competition was held in form of public notices to private sector. Today's hearing is amazing timing because Valentine's Day was date that Hawaii Supreme Court issued its decision in Asato v. Hawaii Procurement Policy Board. Thank you for this opportunity to **STRONGLY OPPOSE** proposed language of subsection (g) in this bill.