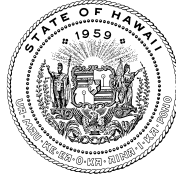


JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



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 GOVERNMENT OPERATIONS

MARCH 14, 2023, 3:00 PM
CONFERENCE ROOM 225 AND VIA VIDEOCONFERENCE, STATE CAPITOL

H.B. 1184, H.D. 1

RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Gabbard, and Members of the Committee, thank you for the opportunity to submit testimony in **support** of House Bill (H.B.) 1184, H.D. 1, which provides a process by which agencies may procure professional services when fewer than three qualified persons respond to an additional 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.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



BONNIE KAHAKUI
ACTING ADMINISTRATOR

STATE OF HAWAI'I | KA MOKU'ĀINA O HAWAI'I
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 SENATE COMMITTEE
ON
GOVERNMENT OPERATIONS
March 14, 2023; 3:00 p.m.

House Bill 1184, HD1
RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Gabbard, and members of the committee, thank you for the opportunity to submit testimony on HB1184, HD1. The State Procurement Office (SPO) supports the intent of the bill and provides the following comments and recommendations:

COMMENT: The SPO had discussions with the architects, engineers, consultants, and County personnel, and we generally agree with the language of the bill. However, the SPO recommends changes to the bill that would allow for better continuity and clarity when less than three persons respond to a professional services notice.

RECOMMENDATION: The SPO recommends the changes provided below for clarification for better flow through the process. This version moves the recommendation when less than three persons respond to a professional notice to section (i).

(i) In situations in which fewer than three qualified persons respond to the additional notice of need, as provided in subsection (b) that has been posted for at least 10 business days; the purchasing agency may request approval from the head of the purchasing agency, except as provided in subsection (3) below, to proceed. Response(s) shall then be evaluated by the selection committee in accordance with subsections (d), (e) and (f) provided that:

(1) For two **qualified** persons, the selection committee shall rank them based on the criteria in subsection (e). If both persons hold the same qualifications, the selectin 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 **qualified** person; the selection committee shall first evaluate qualifications, based on the criteria in subsection (e) and may then send the name of the person to the head of the purchasing agency to negotiate a contract at a fair and reasonable price.

(3) If no qualified person responds, the head of the purchasing may determine in writing that there is no time for resolicitation or that resolicitation would likely be futile. When making this determination, consideration shall be given to time constraints, competition in the marketplace, and the additional cost of preparing, and re-soliciting. In the event of this determination the head of the purchasing agency may submit a written request to the chief procurement officer for approval to engage in direct negotiations with a qualified person. Prior to negotiating:

- (a) The head of the purchasing agency shall submit a submit a "Notice of No Interest Received and Intent to Directly Negotiate" to the chief procurement officer.
- (b) The request shall be made on a form provided by the chief procurement officer. **The request shall include the dates of the solicitation notices and names of persons on the list; including the situation in which no person responds, and the estimated dollar value of the contract.**
- (c) The chief procurement officer shall post a copy of the request on an internet site accessible to the public for seven days.
- (d) Any objections to the request shall be submitted in writing and received by the

chief procurement officer, within the seven-day public posting period.

(e) In determining whether to approve the request, the chief procurement officer shall consider the circumstances of each individual case.

(j) Contracts awarded under this section for \$5,000 or more shall be posted electronically within seven days of the contract award by the chief procurement officer or designee and shall remain posted for at least one year. Information to be posted shall include, but not be limited to: (1) The names of the persons submitted under subsection (g); (2) The name of the person or organization receiving the award; (3) The dollar amount of the contract; (4) The name of the head of the purchasing agency or designee making the selection; and (5) Any relationship of the principals to the official making the award.

(k) 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 established pursuant to subsection (c). Negotiations shall be conducted in the manner set forth in subsection (h), with ranking based on the selection criteria of subsection (e) as determined by the head of the agency.

(l) In cases of awards made under this section, nonselected professional service providers may submit a written request for debriefing to the chief procurement officer or designee within three working days after the posting of the award of the contract. Thereafter, the head of the purchasing agency shall provide the requester a prompt debriefing in accordance with rules adopted by the policy board. Any protest by the requester pursuant to section 103D-701 following debriefing shall be filed in writing with the chief procurement officer or designee within five working days after the date that the debriefing is completed.

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



UNIVERSITY OF HAWAII SYSTEM

‘ŌNAEHANA KULANUI O HAWAII

Legislative Testimony

Hō'ike Mana'o I Mua O Ka 'Aha'ōlelo

Testimony Presented Before the
Senate Committee on Government Operations
March 14, 2023 at 3:00 p.m.

By

Jan Gouveia

Vice President for Administration
University of Hawai'i System

HB 1184 HD1 – RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Gabbard, and Members of the Committee:

The University of Hawai'i is in support of HB 1184 HD1 which allows agencies to proceed with two or fewer qualified persons in the procurement of professional services and respectfully requests that the effective date be changed to July 1, 2023.

This would provide flexibility in securing professional services when the University has less than three qualified persons.

Thank you for the opportunity to testify in support of HB 1184 HD1.

RICHARD T. BISSEN, JR.
Mayor

KEKUHAUPIO R. AKANA
Acting Managing Director



OFFICE OF THE MAYOR
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov

March 13, 2023

TO: Honorable Senator Angus L.K. McKelvey, Chair
Honorable Senator Mike Gabbard, Vice Chair
Senate Committee on Government Operations

FROM: Richard T. Bissen, Jr., Mayor
Scott Teruya, Director of Finance

DATE: March 13, 2023

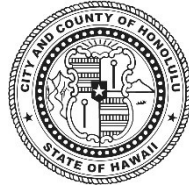
SUBJECT: **SUPPORT OF HB 1184, HD1, RELATING TO PROCUREMENT**

Thank you for the opportunity to testify in **SUPPORT** of this important measure. The purpose of this measure is to provide a process by which agencies may procure professional services when fewer than three qualified persons respond to an additional solicitation.

We **SUPPORT** this measure for the following reasons:

1. This measure will help ensure projects continue to move forward and can prevent unnecessary delays due to a lack of potential vendors or professional services.
2. Maui County, like other neighbor islands, lacks accessibility to readily available and qualified vendors or professional services. This measure will save time and resources exhausted on procuring local vendors or professional services that are scarcely available.

For the foregoing reasons, our administration **SUPPORTS** this measure.



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 SENATE COMMITTEE ON GOVERNMENT OPERATIONS
March 14, 2023, 3:00 PM, Conference Room 225 and Videoconference

TO: The Honorable Senator Angus L.K. McKelvey, Chair
The Honorable Senator Mike Gabbard, Vice Chair
and Members of the Senate Committee of Government Operations

RE: SUPPORT OF HOUSE BILL 1184, HD1 RELATING TO PROCUREMENT

The Department of Budget and Fiscal Services, City and County of Honolulu (City), **supports** House Bill (HB) 1184, HD1 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.

For the reason stated above, the City respectfully supports House Bill 1184, HD1.

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.



March 14, 2023

TO: Honorable Angus McKelvey, Chair
Honorable Mike Gabbard, Vice-Chair
Senate Committee on Government Operations

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

SUBJECT: **Re: House Bill 1184 HD1
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

Dear Chair McKelvey, Vice-Chair Gabbard and Members of the Committee,

My name is Reid Mizue, President, AIA Hawaii Council testifying with **COMMENTS** to the current language of House Bill 1184 HD1. We are pleased that your Committee revised companion SB 1465 in SD1 that reflects much of AIA effort to maintain integrity of Qualifications-Based Selection, while accommodating the rare situation when “fewer than three persons” respond to agency solicitations.

Page 9 lines 1-2

HB 1184 HD1 uses the term “**qualified under state law**” advocated by AIA to ensure that Review Committees do not corruptibly restrict competition using unknown discretionary criteria in private deliberations. Qualified under state law means holding unexpired license under Chapter 464 HRS. AIA strongly voices this exact language **must remain** in current bill.

Page 9 line 5

AIA insists on revising “under rules adopted by the policy board” to read “under this subsection.” We oppose using rules for alternate procurement.

Page 10 lines 7 -21 and Page 11 lines 1-2

AIA testified to House FIN on February 27 that SB 1465 SD1 has superior paragraph 3 to HB 1184 HD1. AIA further testified to House FIN that paragraph 2 of new subsection has “dead end street” problem IF Selection Committee finds the single offeror less-qualified than an agency requires OR fails to negotiate a contract

with the single offeror. AIA suggest revised language to move forward as if no person had responded (**changes below in bold face to companion SB 1465 SD2 language**)

(3) For a situation in which no well-qualified person responds or upon inability to negotiate a contract at fair and reasonable price, the chief procurement officer may determine in writing that there is no time for resolicitation or that resolicitation would likely be futile; provided that when making this determination, consideration shall be given to time constraints, competition in the marketplace, and whether the additional potential cost of preparing, soliciting, and evaluating competitive responses is expected to exceed the benefits normally associated with solicitations. If such determination is made, the purchasing agency may engage in direct negotiations with a qualified person. For any contract to be awarded, the purchasing agency shall post a "Notice of No Interest Received and Intent to Directly Negotiate" on an internet website accessible to the public for seven days. Any objections shall be submitted in writing and received by the chief procurement officer within seven days from the date the notice was posted. The chief procurement officer shall place the "Notice of No Interest Received and Intent to Directly Negotiate" request on hold, review the objection, and provide a written determination to the person submitting the objection. All documents relating to the objection, including written summary of the disposition of the objection, shall be kept with the procurement file;

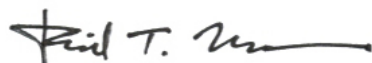
AIA suggestion above has small number of words, but has large positive effect:

- Solution to possible “dead end street” in paragraph 2.
- The term “well-qualified” confirms public policy to select the best qualified architect / engineer to design public buildings or projects that must function for decades.
- Gives needed leverage to agencies when cost negotiating with the single person of paragraph 2.

AIA takes no exception to minor language changes made to companion SB 1465 SD2 by Senate WAM.

Thank you for this opportunity to **COMMENT** on HB 1184 HD1.

Sincerely,



Reid Mizue, AIA

President, American Institute of Architects, Hawaii State Council

HB-1184-HD-1

Submitted on: 3/9/2023 8:08:38 PM

Testimony for GVO on 3/14/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

They should be getting More than Just 3 Bids!!



March 13, 2023

2022-2023 Board of Directors

President

Nimr Tamimi, P.E.
Engineering Partners, Inc.
Ph: (808) 930-7823

President-Elect

Kyle Kaneshiro, P.E.
The Limtiaco Consulting Group
Ph: (808) 586-7790

Treasurer

Shannon Holman, P.E.
Orion Engineers & Associates
Ph: (808) 282-7986

Secretary

Charles Jury, P.E.
Okahara and Associates, Inc.
Ph: (808) 524-1124

Past President

Derek Mukai, P.E.
Community Planning
& Engineering, Inc.
Ph: (808) 531-4252

National Director

Garret Masuda, P.E.
InSynergy Engineering, Inc.
Ph: (808) 521-3773

Directors

Tim Goshi, P.E.
KAI Hawaii, Inc.
Ph: (808) 791-3966

Ross Kaneko, P.E.
Jacobs Engineering Group, Inc.
Ph: (808) 440-0225

Ginny M. Wright
ACECH Executive Director
350 Ward Ave. Ste. #160-83
Honolulu, Hawaii 96814
Ph: (808) 741-4772
Email: gwright@acechawaii.org
Website: www.acechawaii.org

**Senate Committee on Government Operations
Hearing Date: Tuesday, March 14, 2023, 3:00 p.m.**

Honorable Chair McKelvey, Vice Chair Gabbard, and Members of the Senate Committee on Government Operations

Subject: **HB 1184 HD1, Relating to Procurement;
Providing Comments**

Dear Chair McKelvey, Vice Chair Gabbard, 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.

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.

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. ACECH has been engaged in discussions with various stakeholders including the State Procurement Office, American Institute of Architects, County of Kauai, and County of Maui. ACECH prefers the Companion Bill SB1465 SD2 language with some proposed amendments. It is our understanding that the County of Kauai takes no exceptions to this proposed language, however discussion is still ongoing with all the stakeholders.

See Page 2 for suggested language.

Respectfully submitted,
AMERICAN COUNCIL OF ENGINEERING COMPANIES OF HAWAII

(i) If, after ~~thirty ten business~~ days, fewer than three qualified persons respond to the additional notice of need posted pursuant to subsection (b), the purchasing agency may submit a request to the ~~chief procurement officer~~ **head of the purchasing agency, except as provided in subsection i(3) below**, for approval to proceed under this subsection. The request shall include the dates of all solicitation notices and names of qualified persons on the list prepared pursuant to subsection (c). Submissions shall be evaluated in accordance with subsections (d), (e), and (f); provided that:

(1) For two qualified persons, the selection committee shall rank the qualified persons 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 provided 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 one qualified person, the selection committee shall first evaluate the person's qualifications, **based on the criteria in subsection (e)** and may then provide the name of the person to the head of the purchasing agency to negotiate a contract at a fair and reasonable price. **If the head of the purchasing agency determines in writing that either the price of the offer received is not fair and reasonable, or that the qualifications of the offeror is not adequate to meet the procurement needs, the head of the purchasing agency may request approval from the Chief Procurement Officer to proceed as if no person had responded;**

(3) For a situation in which no qualified person responds, the chief procurement officer may determine in writing that there is no time for resolicitation or that resolicitation would likely be futile; provided that when making this determination, consideration shall be given to time constraints, competition in the marketplace, and whether the additional potential cost of preparing, soliciting, and evaluating competitive responses is expected to exceed the benefits normally associated with solicitations. If such a determination is made, the purchasing agency may engage in direct negotiations with a qualified person. For any contract to be awarded, the purchasing agency shall post a "Notice of No Interest Received and Intent to Directly Negotiate" on an internet website accessible to the public for seven days, **providing the name of the person and the estimated dollar amount of the contract.** Any objections shall be submitted in writing and received by the chief procurement officer within seven days from the date the notice was posted. ~~The chief procurement officer shall place the "Notice of No Interest Received and Intent to Directly Negotiate" request on hold, review the objection, and provide a written determination to the person submitting the objection. All documents relating to the objection, including written summary of the disposition of the objection, shall be kept with the procurement file~~ **In determining whether to approve the request, the chief procurement officer shall consider the circumstances of each individual case;** and

(4) The determinations required by this subsection shall be final and conclusive unless the determinations are clearly erroneous, arbitrary, capricious, or contrary to law.

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
Committee on Government Operations
March 14, 2023, 3:00 PM
Conference Room 225 & Via Videoconference

LATE

In consideration of
House Bill 1184, HD 1
Relating to Procurement

Honorable Chair Angus L.K. McKelvey, Vice Chair Mike Gabbard, and Members of the Committee:

The County of Kaua'i respectfully recommends that the honorable members of this committee adopt the following language based on revisions to House Bill 1184, HD1's companion Senate Bill 1465, SD2.

SECTION 1. The legislature finds that the procurement of professional services pursuant to section 103D-304, Hawaii Revised Statutes, currently requires a selection committee to rank a minimum of three persons based on the selection criteria and send the ranking to the head of the purchasing agency to begin negotiations. This requirement was upheld in *Asato v. Procurement Policy Board*, 322 P.3d 228 (Haw. S. Ct. 2014). However, when an agency procures professional services and does not receive the requisite number of responses, it must continue to re-solicit.

This forces the procuring official to continue expending time and resources to fulfill the solicitation and, if the requisite number of responses is never received, leaves the agency no options to proceed.

Accordingly, the purpose of this Act is to 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.

SECTION 2. Section 103D-304, Hawaii Revised Statutes, is amended to read as follows:

"§103D-304 Procurement of professional services. (a) Professional services shall be procured in accordance with sections 103D-302, 103D-303, 103D-305, 103D-306, or 103D-307, or this section; provided that design professional services furnished by licensees under chapter 464 shall be procured pursuant to this section or section 103D-307. Contracts for professional services shall be awarded on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(b) At a minimum, before the beginning of each fiscal year, the head of each purchasing agency shall publish a notice inviting persons engaged in providing professional services [~~which~~] that the agency anticipates needing in the next fiscal year, to submit current statements of qualifications and expressions of interest to the agency. Additional notices shall be given if:

- (1) The response to the initial notice is inadequate;
- (2) The response to the initial notice does not result in adequate representation of available sources;
- (3) New needs for professional services arise; or
- (4) Rules adopted by the policy board so specify.

The chief procurement officer may specify a uniform format for statements of qualifications. Persons may amend these statements by filing a new statement prior to the date designated for submission.

(c) The head of the purchasing agency shall designate a review committee consisting of a minimum of three persons with sufficient education, training, and licenses or credentials for each type of professional service [~~which~~] that may be required. In designating the members of the review committee, the head of the purchasing agency shall ensure the impartiality and independence of committee members. The names of the members of the review committee established under this section shall be placed in the contract file.

The committee shall review and evaluate all submissions and other pertinent information, including references and reports, and prepare a list of qualified persons to provide these services. Persons included on the list of qualified persons may amend their statements of qualifications as necessary or appropriate. Persons shall immediately inform the head of the purchasing agency of any change in information furnished [~~which~~] that would disqualify the person from being considered for a contract award.

(d) Whenever during the course of the fiscal year the agency needs a particular professional service, the head of the purchasing agency shall designate a selection committee to evaluate the statements of qualification and performance data of those persons on the list prepared pursuant to

subsection (c) along with any other pertinent information, including references and reports. The selection committee shall be comprised of a minimum of three persons with sufficient education, training, and licenses or credentials in the area of the services required. In designating the members of the selection committee, the head of the purchasing agency shall ensure the impartiality and independence of committee members. The names of the members of a selection committee established under this section shall be placed in the contract file.

(e) The selection criteria employed in descending order of importance shall be:

- (1) Experience and professional qualifications relevant to the project type;
- (2) Past performance on projects of similar scope for public agencies or private industry, including corrective actions and other responses to notices of deficiencies;
- (3) Capacity to accomplish the work in the required time; and
- (4) Any additional criteria determined in writing by the selection committee to be relevant to the purchasing agency's needs or necessary and appropriate to ensure full, open, and fair competition for professional services contracts.

(f) The selection committee shall evaluate the submissions of persons on the list prepared pursuant to subsection (c) and any other pertinent information [~~which~~ that may be available to the agency, against the selection criteria. The committee may conduct confidential discussions with any person who is included on the list prepared pursuant to subsection (c) regarding the services [~~which~~ that 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.

(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. 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.

(h) The head of the purchasing agency or designee shall negotiate a contract with the first ranked person, including a rate of compensation [~~which~~] that 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.

(i) If, after ten business days, fewer than three qualified persons respond to the additional notice of need posted pursuant to subsection (b), the purchasing agency may submit a request to the head of the purchasing agency, except as provided in subsection i(3) below, for approval to proceed under this subsection. Submissions shall be evaluated in accordance with subsections (d), (e), and (f); provided that:

(1) For two qualified persons, the selection committee shall rank the qualified persons 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 provided 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 one qualified person, the selection committee shall first evaluate the person's qualifications and may then provide the name of the person to the head of the purchasing agency to negotiate a contract at a fair and reasonable price. If the head of the purchasing agency determines in writing that either the price of the offer received is not fair and reasonable, or that the qualifications of the offeror is not adequate to meet the procurement needs, the head of the purchasing agency may request approval from the Chief Procurement Officer to proceed as if no person had responded;

(3) If no qualified person responds, the head of the purchasing agency may determine in writing that there is no time for resolicitation or that resolicitation would likely be futile; provided that when making this determination, consideration shall be given to time constraints, competition in the marketplace, and whether the additional potential cost of preparing, soliciting, and evaluating competitive responses is expected to exceed the benefits normally associated with solicitations. In the event of this determination the head of the purchasing agency may submit a written request to the chief procurement officer for approval to engage in direct negotiations with a qualified person. Prior to negotiating:

- (A) The head of the purchasing agency shall submit a "Notice of No Interest Received and Intent to Directly Negotiate," providing the name of the person and the estimated dollar amount of the contract, to the chief procurement officer.
- (B) The request shall be made on a form provided by the chief procurement officer. The request shall include the date(s) of the solicitation notice(s) and names of persons on the list; including the situation in which no person responds.
- (C) The chief procurement officer shall post a copy of the request on an internet site accessible to the public for seven days.
- (D) Any objections to the request shall be submitted in writing and received by the chief procurement officer, within the seven day public posting period.
- (E) In determining whether to approve the request, the chief procurement officer shall consider the circumstances of each individual case.

(4) If such a determination is made, the purchasing agency may engage in direct negotiations with a qualified person.

(5) The determinations required by this subsection shall be final and conclusive unless the determinations are clearly erroneous, arbitrary, capricious, or contrary to law.

~~[(i)]~~ (j) Contracts awarded under this section for \$5,000 or more shall be posted electronically within seven days of the contract award by the chief procurement officer or designee and shall remain posted for at least one year. Information to be posted shall include, but not be limited to:

- (1) The names of the persons submitted under subsection (g);
- (2) The name of the person or organization receiving the award;
- (3) The dollar amount of the contract;
- (4) The name of the head of the purchasing agency or designee making the selection; and
- (5) Any relationship of the principals to the official making the award.

~~[(j)]~~ (k) 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 established pursuant to subsection (c). Negotiations shall be conducted in the manner set forth in subsection (h), with ranking based on the selection criteria of subsection (e) as determined by the head of the agency.

~~[(*)]~~ (1) In cases of awards made under this section, nonselected professional service providers may submit a written request for debriefing to the chief procurement officer or designee within three working days after the posting of the award of the contract. Thereafter, the head of the purchasing agency shall provide the requester a prompt debriefing in accordance with rules adopted by the policy board. Any protest by the requester pursuant to section 103D-701 following debriefing shall be filed in writing with the chief procurement officer or designee within five working days after the date that the debriefing is completed."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2112.

With these recommended revisions to SB 1465, SD 2, the County of Kaua'i has endeavored to accurately reflect the general consensus and agreements that have been achieved between the professional architects, engineers, and consultants, and the State and County procurement personnel, who have been actively engaged in meetings and discussions to achieve consensus with regard to the contents of this measure.

The County of Kaua'i commits any additional time, coordination, and discussions that may be needed to

further refine this measure. Its success is critical to the County of Kauai. It is understood that our larger counterparts only infrequently do not receive adequate responses. However, as a smaller jurisdiction, the County of Kauai frequently does not receive adequate responses, even after posting additional notices of need.

Specifically, the County of Kauai has had problems with obtaining three resumes for the following areas for FY 23,22,21 and 20:

1. Boards or Commission Prosecutors (HRS 605 Attorneys)
2. County Clerk Special Counsel (HRS 605 Attorneys)
3. County Clerk Professional Engineering Svc Audits (HRS 464)
4. Finance- General Obligation Bonds Refinancing Underwriting Svc
5. KPD Psychological Service (HRS 415A-2 Psychology)
6. IT – Land Information Management System (LIMS) (GS-1373 Land Surveying, GS -1550 Computer Science)
7. KFD – Kauai Fire Department Utilization and Operational Study (GS-1515 Operations Research)
8. KFD- Kauai Fire Department Medical Director (HRS 453)
9. CA- Contracts management System Consultant (GS-1550 Computer Science Series)
10. Planning – Lihue Civic Center Redevelopment Feasibility Plan (GS-020 Community Planning)
11. Planning Socioeconomic Forecast Update (GS-1530 Statistic, GS-140 Workforce Research and Analysis)
12. Planning – East Kauai Land use and Transportation Plan (GS-020 Community Planning)
13. Housing – Consulting and Brokerage Svc for Restructuring and Preservation of County Owned Affordable Rental Project (GS-1170 Realty)
14. Planning – Appraisals for Open Space Commission (GS-1171 Appraising)
15. Parks and Rec- KWMCH Hurricane Shelter Assessment (HRS 464 Engineers, Architects and Surveyors) **2 CFR Project**

The repeal of Hawaii Administrative Rule 3-122-66 following the Asato v. Procurement Policy Board ruling made it either difficult or impossible for the County of Kauai to timely move forward on the above professional service initiatives. This adversely impacts the people of our community who are ultimately the beneficiaries of these services.

The County of Kauai’s proposed revisions SB 1465, SD 2, ensures the structural and procedural adherence consistent with the statute that governs professional services per HRS 103D-304. 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 critical professional service contracts to those 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.

It should be noted that, under current law, when a jurisdiction receives inadequate responses, HRS 103D-304(b) allows for additional notices of need to be posted. However, HRS 103D-304(b) does not impose any posting requirement related to days. The County of Kauai does not advocate to change this. If a jurisdiction believes it will receive adequate responses to an additional notice of need that is posted for less than thirty days, we believe they should retain discretion to post for a period they deem appropriate. Conversely, we support the proposed new subsection being restricted to use when there

has been inadequate response after additional notices of need have been posted for at least thirty days. In our view this approach balances maintaining the status quo (which largely works) with providing an appropriate and measured safeguard on an alternative option (when the status quo does not work).

We remain open to additional safeguards if deemed appropriate. We do not seek to create an exception which swallows the rule; rather, we seek a way forward when resolicitation has proved futile. We do not need it to be easy, but we do need it to be possible.

The County of Kaua'i extends our heartfelt appreciation and thanks to the numerous professionals and consultants who provided the opportunity for dialogue and consensus building throughout the meeting discussions that occurred. It is for these reasons, that we support and respectfully recommend the adoption of the enclosed revisions to SB 1465, SD 2.

Thank you for your consideration of this testimony.