



**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

P.O. Box 119  
Honolulu, Hawaii 96810-0119  
Telephone: (808) 587-4700  
e-mail: [state.procurement.office@hawaii.gov](mailto:state.procurement.office@hawaii.gov)  
<http://spo.hawaii.gov>

TESTIMONY  
OF  
SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE  
ON  
ECONOMIC DEVELOPMENT & BUSINESS

FEBRUARY 3, 2015, 9:00 A.M.

HB895  
RELATING TO PROCUREMENT OF PROFESSIONAL SERVICES

Chair Kawakami, Vice-Chair Kong, and members of the committee, thank you for the opportunity to submit testimony on HB895.

The State Procurement Office (SPO) strongly SUPPORTS this measure *as written*.

This measure addresses an issue under current law that, under certain circumstances, which paralyzes the procurement of professional services, specifically for design professionals licensed under chapter 464. Hawaii Revised Statutes 103D-304(g) requires a *minimum of three* ranked persons to move forward in the procurement process. If there are less than three qualified persons in response to a professional services procurement, a procurement officer can be in a situation where the only possible action under the procurement code is to re-solicit, sometimes repeatedly and to the detriment of the State and potential qualified applicant(s). This dead end wastes taxpayer dollars and is inefficient for the State and for potential qualified applicants, who invest time and money each time they submit an application.

By addressing situations where there are *fewer than three* qualified persons available, this measure accounts for the operational reality of professional services procurement by allowing the procurement to move forward under an alternative procedure.

Thank you.

February 3, 2015



Honorable Derek Kawakami, Chair  
House Committee on Economic Development & Business

**House Bill 895**  
**Relating to the Procurement of Professional Services**

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Executive Vice President

**AIA Hawaii State Council**  
Center for Architecture  
828 Fort St. Mall, Ste. 100  
Honolulu, HI 96813-4452

Dear Chair Kawakami and Members of the Committee,

My name is Daniel Chun, President of the American Institute of Architects (AIA) Hawaii State Council with 38 years of local architectural business practice experience. I am the Hawaii delegate to the AIA State Government Network comprised of the 50 states. I worked personally on the current language of HRS 103D-304 during the Lingle Administration to bring the procurement of architectural design services into conformity with federal procurement and the great preponderance of the 50 states. You might recall the current language was carefully drafted, lobbied and enacted in response to charges of political corruption in the award of local design professional services contracts.

AIA is **STRONGLY OPPOSED** to lines 10-13 that allows the agency head to select from among a list of top ranked persons instead of ranking by the selection committee. This was a feature of past corrupt procurement whereby persons meeting the minimum qualifications were sent for an agency head to select his or her favorite. AIA questions the need for the change in lines 10-13 if HB 895 is intended to address the problem of an agency receiving fewer than three offers.

AIA is **OPPOSED** to the current language of lines 14-17. The language needs reference to subsection (b), the statutory-required Notice prior to the beginning of the fiscal year and subsequent Notices if too few offers are received. The required Notice prior to the beginning of the fiscal year is intended to forewarn an agency of possible shortages of offers. Only after an agency pursues the relief offered in subsection (b) should less than three offers be considered. Perhaps Rules are not needed.

My personal experience is that in procurement law every word has a strong effect. Thank you for this opportunity to **OPPOSE** the current language of House Bill 895.

A handwritten signature in cursive script, appearing to read "Daniel Chun".



**President**

William H.Q. Bow, P.E.  
Bow Engineering & Development, Inc.  
Ph: (808) 941-8853

**President-Elect**

Robin M. Lim, P.E.  
Geolabs, Inc.  
Ph: (808) 841-5064

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Garret A. Masuda, P.E.  
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Ph: (808) 521-3773

Ken Kawahara, P.E.  
Akinaka & Assoc.  
Ph: (808) 836-1900

Sean K. Sugai, P.E.  
Ronald N.S. Ho & Assoc., Inc.  
Ph: (808) 941-0577

Ginny M. Wright  
Executive Director  
P.O. Box 88840  
Honolulu, HI 96830  
Ph: (808) 741-4772  
Email: [gwright@acechawaii.org](mailto:gwright@acechawaii.org)  
Website: [www.acechawaii.org](http://www.acechawaii.org)

February 2, 2015

**House Committee on Economic Development & Business**  
**Hearing Date: Tuesday, February 3, 9 a.m., Conference Room 312**

Honorable Representatives Derek S.K. Kawakami, Chair; Sam Satoru Kong, Vice Chair; and Members of the House Committee on Economic Development & Business

Subject: **HB 895, Relating to Procurement of Professional Services**  
**TESTIMONY IN OPPOSITION**

Dear Chair Kawakami, Vice Chair Kong, 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 is a strong supporter of the State's "qualification-based selection" (QBS) law, codified as HRS 103D-304, and has significant concerns about the proposed changes to the law.

The current requirement in HRS 103D-304 for the ranking of a minimum of three qualified firms is based on the Federal Brooks Act (Public Law 92-582) for the procurement of professional Architect-Engineering services, and has stood the test of time as the model procurement code since 1972, more than 40 years. Given the number of highly qualified A-E firms in Hawaii, ACECH finds it difficult to believe that a minimum of three qualified firms cannot routinely be found by the selection committee. We are concerned that the proposed alterations to the bill may lead to abuse, such as setting stringent selection criteria that would favor one firm.

We are also concerned that procuring entities may take advantage of a revised law to avoid the process of ranking a minimum of three firms. We recognize that ranking three qualified firms and completing the paperwork takes time and effort on the part of the procuring entity, but it is the best procedure to protect the public's interests, and to ensure that professional services are procured in a fair and transparent manner. If agencies are truly having difficulty in finding three qualified parties, they should be able to provide that data so that the nature and extent of the problem can be evaluated.

Given the concerns related to this bill and the potential for abuse in the procurement process, we request that this bill be held. Further discussions by the affected parties may lead to another solution that would not affect the model procurement code. 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

William H.Q. Bow, P.E.  
President

DAVID Y. IGE  
GOVERNOR



KATHRYN S. MATAYOSHI  
SUPERINTENDENT

STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

**Date:** 02/03/2015

**Time:** 09:00 AM

**Location:** 312

**Committee:** House Economic Development &  
Business

**Department:** Education

**Person Testifying:** Kathryn S. Matayoshi, Superintendent of Education

**Title of Bill:** HB 0895 RELATING TO PROCUREMENT OF PROFESSIONAL SERVICES.

**Purpose of Bill:** Authorizes the procurement policy board to adopt rules addressing situations of less than three qualified persons for procurement of professional services. Effective upon approval.

**Department's Position:**

The Department of Education supports this bill. The bill's provisions will allow for increased flexibility when dealing with real world procurement issues. The provisions in this bill will also align the professional services portion of the procurement with other parts of the code for which this flexibility already exists.

DAVID Y. IGE  
GOVERNOR



Testimony of  
FORD N. FUCHIGAMI  
DIRECTOR

Deputy Directors  
JADE T. BUTAY  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN

IN REPLY REFER TO:

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

**LATE**

February 3, 2015  
9:00 am  
State Capitol, Room 312

**H.B. 895**  
**RELATING TO PROCUREMENT OF PROFESSIONAL SERVICES**

House Committee on Economic Development and Business

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The Department of Transportation (DOT) **supports** the intent of this bill which proposes to give the procurement policy board the authority to adopt rules to address situations whereby less than three qualified persons are submitted to the head of the purchasing agency for the procurement of professional services.

However, the DOT receives federal funding from Operating Administrations under the U.S. DOT. With regards to architectural and engineering professional services only, Federal law, 40 U.S.C. § 1101-1104 (Brooks Act) requires the federal purchasing agency to rank a minimum of three firms based on demonstrated competence and qualifications.

Thank you for the opportunity to provide testimony.