

DAVID Y. IGE
GOVERNOR



CURT T. OTAGURO
COMPTROLLER

AUDREY HIDANO
DEPUTY COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
CURT T. OTAGURO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE

SENATE COMMITTEE
ON
GOVERNMENT OPERATIONS

THURSDAY, JANUARY 27, 2011, 3:00 P.M.
CONFERENCE ROOM 016, STATE CAPITOL

S.B. 2385

RELATING TO PROCUREMENT

Chair Moriwaki, Vice Chair Dela Cruz, and members of the Committee, thank you for the opportunity to submit testimony on S.B. 2385. The Department of Accounting and General Services (DAGS) supports the intent of the bill as it allows agencies more timely alternatives to complete procurement of professional services when there are fewer than three qualified respondents.

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



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Government Operations
January 27, 2022 at 3:00 p.m.

By
Jan Gouveia
Vice President for Administration
University of Hawai'i

SB 2385 – RELATING TO PROCUREMENT

Chair Moriwaki, Vice Chair Dela Cruz, and members of the committee:

Thank you for the opportunity to present testimony on SB 2385 – Relating to Procurement. The University of Hawai'i supports this bill, which allows agencies to seek alternative procurement approval for the procurement of professional services when there are fewer than three qualified persons available.

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 with the solicitation upon approval serves the best interest of the state.

Thank you for the opportunity to testify in support of SB 2385.



**STATE OF HAWAII
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
January 27, 2022; 3:00 PM**

**SENATE BILL 2385
RELATING TO PROCUREMENT**

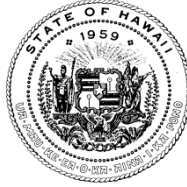
Chair Moriwaki, Vice Chair Dela Cruz, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 2385. The State Procurement Office (SPO) submits the following comments:

In 1995 the Procurement Policy Board, created 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 Supreme Court of Hawaii, 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 for the purpose of decreasing the waste of government resources.

Thank you.



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

January 27, 2022
3:00 P.M.
State Capitol, Teleconference

S.B. NO. 2385
RELATING TO PROCUREMENT

Senate Committee on Government Operations

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

S.B. NO. 2385 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 qualified persons and will only cause project delay.

DOT proposes amending S.B. NO. 2385 by revising the language "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" to "If less than three qualified persons are available, the head of the purchasing agency or designee may proceed with two or fewer qualified persons, provided that the agency determines in writing that it is in the best interest of the DOT and the State of Hawaii to proceed with fewer than three qualified persons."

Thank you for the opportunity to provide testimony.



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January 26, 2022

Senate Committee on Government Operations

Hearing Date: Thursday, January 27, 2022, 3:00 p.m.

Honorable Senators Sharon Y. Moriwaki, Chair; Donovan M. Dela Cruz, Vice Chair; and Members of the Senate Committee on Government Operations

Subject: **SB 2385, Relating to Procurement**
TESTIMONY IN OPPOSITION

Dear Chair Moriwaki, Vice Chair Dela Cruz, 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 **OPPOSES this bill** as written due the potential for corruption of the procurement process with respect to procurement of design professionals.

We know of no discipline of design professionals (licensed under Chapter 464) where there are likely to be less than three offerors, as there are numerous highly qualified firms in all disciplines in the State. Therefore, we suspect the bill is targeted towards other professional services.

Section 103D-304, Hawaii Revised Statutes, defines the selection criteria to be employed by the selection committee. Based on these criteria the selection committee shall rank a minimum of three firms. Section 103D-304 does not provide specific criteria to determine if a firm is “qualified” or “unqualified”, rather it provides the criteria to rank each offeror based on their qualifications. We are concerned that an alternative procurement method could be used to sidestep Qualification-Based Selection, which is the standard procurement method for professional services. We remember the corruption that tarnished our state prior to passage of Section 103D-304 and seek to avoid diminishing the regulation and the protections it provides to the public.

If this bill is not deferred, we propose excluding design professionals through revising the underlined addition to read as follows:

Except for professionals licensed under Chapter 464, 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.

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



January 27, 2022

TO: Honorable Sharon Y. Moriwaki, Chair
Senate Committee on Government Operations

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

SUBJECT: **Re: Senate Bill 2385**
Relating to Professional Services

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 Moriwaki and Members of the Committee,

My name is Reid Mizue VP/President-elect AIA Hawaii Council submitting **STRONG OPPOSITION / OPPOSITION** on SB 2385. The bill amends HRS 103D-304 with underscored text 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. AIA objection is based on:

SB 2385 is repudiation of Asato v. Procurement Policy Board wherein Hawaii Supreme Court reinforced long-standing state policy of “no fewer than three qualified persons.”

On one of the largest cost public works projects in Hawaii history, only two qualified persons were considered to compete for contracts. In a world with more qualified design professionals than projects, it might be expected that there would be intense interest. Thus as an example, AIA questions why only two were under consideration despite the “no fewer than three qualified persons” State policy.

HRS 103D-304 Subsection (b) requires public notice BEFORE THE BEGINNING OF EACH FISCAL YEAR FOR SERVICES THAT THE AGENCY ANTICIPATES NEEDING IN THE NEXT FISCAL YEAR. This subsection fast-tracks construction projects already poised for appropriation and gives advance warning if too few qualified persons respond to Notice. Subsection encourages further notices; the first reason being inadequate response. Based on our members' experience, public agencies have done this for the most part. Many public agencies have good practice of “open enrollment” accepting statements of qualifications at any time to encourage competition from more firms.

More architects have experience designing public buildings than there are public design contracts for. If a design service is so unique and needs specialized experience, a wise architect will seek collaboration; boosting professional qualifications. Procurement delays are sometimes due to complex agency planning.

HRS 103D-304 Subsection (c) Review Committee to confirm meeting minimum qualifications. It is said that holding Hawaii license under HRS 464 is the minimum qualification, but architects may include any promotional material that better informs the Selection Committee of subsection (d). Here is another feature of current law seeking to preclude too few qualified persons. AIA believes in broadest competition for public contracts.

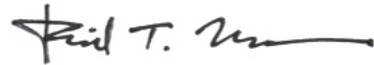
“alternative procurement approval from the chief procurement officer or designee.”

AIA opposes proposed language above:

1. There is no alternative procurement process being allowed under SB 2385. Sole source contract 103D-301, low bid 103D-302, competitive sealed proposals 103D-303? The lack of clarity in the bill can have effect of delaying award of contracts. Current law already allows “emergency procurement” 103D-307 to cover urgently needed design services.
2. While still strongly opposed, AIA could imagine revising the number within 103D-304. SB 2385 sets NO minimum number; meaning only one person could be deemed qualified and thus selected. Architects are rightly concerned that this bill could create concerns for unfair selection processes.
3. Approval of the chief procurement officer or designee is problematic because the Committees meet in executive session. Our understanding is that the elected governor is already allowed to exempt very specific procurements when in the best interests of the state. To best of our knowledge, no design contracts have been exempted.
4. Current law subsection (j) already allows option for CPO or designee to make award from any **two persons** on pre-qualified list of subsection (c) when contract is less than \$ limits of 103D-305. Based on these existing statutes AIA questions the need for SB 2385.
5. The current law has stood unamended for twenty years. A testament to its utility and flexibility is that Hawaii Administrative Rules are only a repeat of the statutory language.

Passage of SB 2385 endorses practices that can lead to public corruption. Thank you for this opportunity to **STRONGLY OPPOSE / OPPOSE** on Senate Bill 2385.

Sincerely,

A handwritten signature in black ink, appearing to read "Reid T. Mizue", with a stylized flourish at the end.

Reid Mizue, AIA
American Institute of Architects, Hawaii State Council

SB-2385

Submitted on: 1/26/2022 11:48:02 AM

Testimony for GVO on 1/27/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Janice Marsters	Testifying for Hart Crowser, a division of Haley & Aldrich	Oppose	No

Comments:

Honorable Senators:

I am a Senior Principal with Hart Crowser, a division of Haley & Aldrich, a geotechnical, environmental, and natural resources consulting firm with offices on O‘ahu and Maui. I have led design professional firms in Hawai‘i for 30 years.

I oppose the bill because of my concern about the erosion of “qualifications-based selection” (QBS) for design professionals. QBS is the national gold standard for selection of professional services. Prior to the QBS statute (103D-304), corruption in the selection of design professionals was rampant and resulted in a lot of bad press and loss of public confidence.

This bill may have been instigated due to issues with procuring professional services other than the design professionals licensed under Chapter 464. I know of no situation where there are less than three design professional consultants licensed under Chapter 464 qualified for a project. Therefore, I request that if the bill is to proceed, design professionals are excluded by revising the language to read:

Except for professionals licensed under Chapter 464, 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.

Respectfully submitted,

Janice Marsters

808.371-8504

SB-2385

Submitted on: 1/26/2022 12:25:14 PM

Testimony for GVO on 1/27/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Matthew K Unten	Testifying for Coffman Engineers, Inc.	Oppose	No

Comments:

Coffman Engineers, Inc. opposes this bill because it is inappropriate for the selection of design professionals licensed under Chapter 464. It is our understanding that there is no discipline of design professionals where there are less than 3 qualified firms. This bill may have unintended consequences of having agencies side step Qualification Based Selection, which is the standard procurement method for professional services. If the Committee is inclined to pass this bill out, it should be amended to exclude design professionals licenses under Chapter 464.



Okahara and Associates, Inc.

ENGINEERS AND LANDSCAPE ARCHITECTS

January 26, 2022

Senate Committee on Government Operations

Hearing Date: Thursday, January 27, 2022, 3:00 p.m.

Honorable Senators Sharon Y. Moriwaki, Chair; Donovan M. Dela Cruz, Vice Chair; and Members of the Senate Committee on Government Operations

Subject: **SB 2385, Relating to Procurement**
TESTIMONY IN OPPOSITION

Dear Chair Moriwaki, Vice Chair Dela Cruz, and Committee Members:

Okahara and Associates, Inc. is a multi-disciplined (civil, mechanical and landscape architecture) consulting engineering firm, which has been doing business in Hawai'i for the past 40 years. We are a Hawai'i based company with offices on Oahu and Hawai'i Island. We provide professional services for the State of Hawaii and are procured under §103D-304. We **OPPOSE** this bill.

Section 103D-304, Hawaii Revised Statutes, defines the selection criteria to be employed by the selection committee. Based on these criteria the selection committee shall rank a minimum of three persons based on the selection criteria. Section 103D-304 does not provide specific criteria to determine if a firm "qualified" or "unqualified", rather it provides the criteria to rank each offeror based on their qualifications. We are concerned that an alternative procurement method could be used to sidestep Qualification-Based Selection, which is the standard procurement method for professional services.

Respectfully submitted,
OKAHARA AND ASSOCIATES, INC.



Charles L. Jury, P.E.
Vice President



Senate Committee on Government Operations
Hearing Date: Thursday, January 27, 2022, 3:00 p.m.

January 26, 2021

Honorable Senators Sharon Y. Moriwaki, Chair; Donovan M. Dela Cruz, Vice Chair; and
Members of the Senate Committee on Government Operations

Subject: **TESTIMONY IN OPPOSITION - SB 2385, Relating to Procurement**

Dear Chair Moriwaki, Vice Chair Dela Cruz, and Committee Members:

CONSOR Engineers, LLC (CONSOR) is a multi-discipline firm providing engineering services for structural engineering, water-wastewater, transportation planning and design, and construction services. CONSOR's project portfolio, spans thousands of transportation projects across North America, Canada, Hawaii, and Overseas. Our firm's extensive roster of clients is comprised of numerous state departments of transportation, the US Army Corps of Engineers, the US Coast Guard, the US Navy, and the US Department of the Interior. CONSOR has conducted engineering work in 49 states and is familiar with numerous state and local procurement and contracting regulations. With 60 offices and more than 1,200 employees, including 330+ professional engineers. *CONSOR is ranked #69 on Engineering News-Record's Top 500 firms list for 2021.*

We know of no discipline of design professionals (licensed under Chapter 464) where there are likely to be less than three offerors, as there are numerous highly qualified firms in all disciplines in the State. Therefore, we suspect the bill is targeted towards other professional services.

Section 103D-304, Hawaii Revised Statutes, defines the selection criteria to be employed by the selection committee. Based on these criteria the selection committee shall rank a minimum of three firms. Section 103D-304 does not provide specific criteria to determine if a firm is "qualified" or "unqualified", rather it provides the criteria to rank each offeror based on their qualifications. We are concerned that an alternative procurement method could be used to sidestep Qualification-Based Selection, which is the standard procurement method for professional services. We remember the corruption that tarnished our state prior to passage of Section 103D-304 and seek to avoid diminishing the regulation and the protections it provides to the public.

If this bill is not deferred, we propose excluding design professionals through revising the underlined addition to read as follows:

Except for professionals licensed under Chapter 464, 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.

Mahalo for hearing our testimony, if you would like to discuss further, I can be available for consultation on this matter.

A handwritten signature in blue ink that reads 'Ikaika Kincaid'.

Ikaika Kincaid, PE, CCM
Regional Director, Hawaii

SB-2385

Submitted on: 1/26/2022 11:03:47 AM

Testimony for GVO on 1/27/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Sandie Wong	Individual	Oppose	Yes

Comments:

I oppose this bill because it is inappropriate for the selection of design professionals licensed under Chapter 464. It is my understanding that there is no discipline of design professionals where there are less than 3 qualified firms. This bill may have unintended consequences of having agencies side step Qualification Based Selection, which is the standard procurement method for professional services. If the Committee is inclined to pass this bill out, it should be amended to exclude design professionals licenses under Chapter 464.

LATE

SB-2385

Submitted on: 1/26/2022 4:15:26 PM

Testimony for GVO on 1/27/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Daniel G. Chun	Individual	Oppose	No

Comments:

January 27, 2022

Honorable Sharon Y. Moriwaki, Chair

Senate Committee on Government Operations

Re: Senate Bill 2385 Relating to Professional Services

Dear Chair Moriwaki and Members of the Committee,

My name is Daniel Chun writing in **STRONG OPPOSITION** to SB 2385. The bill amends HRS 103D-304 with underscored text 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. Twenty years ago, responding to public allegations of corruption in award of design contracts, I lobbied the legislature to pass current statute that stands **UNAMENDED** today. My opposition is based on SB 2385 repudiating Asato v. Procurement Policy Board wherein Hawaii Supreme Court reinforced long-standing state policy of “no fewer than three qualified persons.”

Asato involved violation of statutory “no fewer than three qualified persons” committed by City & County of Honolulu about 26 times in award of contracts to design HART transit system. Only two qualified persons were considered to compete for contracts relating to the largest cost public works project in Hawaii history. I only know the plain facts of Asato. I **DO NOT** know the reasons why only two persons were evaluated by Selection Committee.

“alternative procurement approval” is already framed in statute subsection (j) text below:

(j) 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.

The limit for services in small purchases procurement 103D-305 is “less than \$100,000.” And no Selection Committee is required. Therefore, it is hard for me to understand why this bill is needed.

There are some challenges especially in smaller counties

Being associated with 2001 passage has made me aware of some challenges in smaller counties where fewer design professionals sell services. There are architects on every island, but typically fewer consulting engineers. For several years, Kauai County published its anticipated need for electrical design contracts along with \$ range of design fees it anticipated paying. I thought this was good practice because it gave notice of future contracts. Maui County has said they have had problem finding structural engineers to apply for concrete repair contracts. My response is why not have more encompassing list of subsection (c) to include architects who might team with their engineer? Restoration architects for example.

While working on the 2001 legislation, a fourth-ranked selection criteria was included. Rarely implemented, my understanding is that this criterion is intent on training more professionals to create larger pool of competitors in the future. Hence an agency might consider younger / newer person who lacked extensive experience but had solid future potential or performed well on other projects.

Asato is grievous situation because the contracts were of very high dollar value; normally attracting many qualified applicants. But the purpose of SB 2385 seems to be small \$ projects for which 103D-304 subsection (j) was specifically written in 2001. An alternate design

procurement method is IDIQ or “indefinite delivery indefinite quantity”; whereby a single design contract is awarded for unspecified number of separated construction projects. This is already used in federal design contracting because projects can be of very limited scope and /or remote locations; situations more difficult to find interested offerors. Hawaii would need change of current ban on “bundling” in HRS 103D-305. IDIQ contracts typically have dollar cap. But there would be no need to revise 103D-304 to implement IDIQ.

Thank you for the opportunity to present personal testimony **STRONGLY OPPOSING** Senate Bill 2385.