



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Ways and Means
and

Senate Committee on Judiciary
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by

Jan Gouveia, Vice President for Administration
University of Hawai'i System

HB 1067 HD1 SD1 – RELATING TO PROCUREMENT FOR THE UNIVERSITY OF HAWAII

Chairs Dela Cruz and Rhoads, Vice Chairs Keith-Agaran and Keohokalole, and members of the Committees:

Thank you for the opportunity to submit testimony on HB 1067 HD1 SD1, which amends section 6 of Act 42, Session Laws of Hawai'i (SLH) 2018, to extend the sunset provision expiration to June 30, 2024. The University of Hawai'i (University) is in support of this measure, but requests that the HD1 version of the bill be reinstated, which will permanently reinstate the President as the chief procurement officer for contracts for construction and construction-related professional services. Furthermore, the University requests that the effective date of the bill be amended to June 29, 2021.

In 2018, Act 42, SLH 2018, was signed into law that, among other things, amended Hawai'i Revised Statutes (HRS) §§103D-203 and 304A-2672 to reinstate the authority of the President as the Chief Procurement Officer for construction-related procurements and provided a sunset date of June 30, 2021 for the repeal of the act and reenactment of HRS §§103D-203 and 304A-2672 as amended in 2013 by Act 87, SLH 2013 (HB 114).

Act 87, SLH 2013 (HB 114), among other things, amended HRS §§103D-203 and 304A-2672 to:

- Require the Administrator of the State Procurement Office (SPO), rather than the University of Hawai'i President, to serve as the Chief Procurement Officer for construction-related procurements;
- Require all procurements for professional services furnished by licensees under chapter 464 (i.e. Engineers, Architects, Surveyors, and Landscape Architects) for construction projects to be “coordinated” with the Department of Accounting and General Services (DAGS); and
- Require SPO to submit a report to the legislature, no later than twenty days prior to the convening of the regular session of 2016, of the Administrator's findings and recommendations, including any proposed legislation, relating to the transparency, efficiency, and compliance of the University of Hawai'i's procurement of construction contracts and construction-related consultant services pursuant to chapter 103D, HRS.

Currently and prior to 2013, the President has been afforded the duties, powers and authority of a chief procurement officer – similar to the Administrative Director of the Courts for the Judiciary, President of the Senate, Speaker of the House of Representatives, Chairperson of the Board of the Office of Hawaiian Affairs, Superintendent of the Department of Education, CEO of Hawai'i

Health Systems Corporation, the Administrator of the State Procurement Office, the respective finance directors of the counties, the respective chairpersons of the councils of the counties, the managers and chief engineers of the respective county boards of department water supply, and director of the semi-autonomous public transit agency.

The chief procurement officer plays an integral role in the day-to day transactions of all procurements under chapter 103D, HRS – which is an already complicated and time-consuming effort. It became further complicated and time consuming when this role was transferred to the Administrator for SPO, along with the additional requirement of coordinating with DAGS. Fortunately, the Administrator for SPO and the Public Works Director for DAGS handled the situation with professionalism and sensitivity to their impact on UH's CIP program, and all parties agreed to some basic parameters and a process for all construction-related procurements.

In accordance with the Act, the SPO Administrator submitted a report to the 2016 Legislature entitled, "State Procurement Office Findings and Recommendations Relating to the University of Hawai'i's Procurement of Construction Contracts and Construction-Related Consultant Services Pursuant to Chapter 103D Hawai'i Revised Statutes as Required by Act 87, SLH 2013, 'Relating to Higher Education.'"

The report documents the extensive oversight, reviews, cooperation and coordination between the University and the SPO on procurements for construction and construction-related professional services. As documented in the report, between July 1, 2013 to June 30, 2015, the SPO reviewed 102 University solicitations for construction out of 373 construction procurements conducted by UH during that time. The reviews included solicitations for competitive sealed bids, professional services, and small purchases. The SPO also provided oversight of post-award procurement activities by conducting eleven (11) construction site visits and three (3) desktop reviews of on-going projects.

The conclusion to the report stated:

"Based on SPO's review of 102 UH construction solicitations, UH's Administrative Procedures, and fourteen (14) post-award Site Visits, SPO finds that UH is conducting construction procurements in a compliant, efficient, and transparent manner."

The SPO report set forth minimal recommendations for improvement and, in fact, lauded some University-specific procedures as "best-practices." While the University has implemented the SPO recommendations, it has continued to improve the efficiency, transparency and compliance of its capital program since the Report:

1. To ensure strict compliance with the Hawai'i Public Procurement Code, the University has extensively revised policies and procedures related to the procurement of construction and professional services to align with Section 103D HRS and its related Hawai'i Administrative Rules.
2. To ensure the prudent and transparent expenditure of public funds, the University established a core staff of procurement professionals, dedicated solely to the procurement of construction and construction-related professional services.
3. The University has adopted the Hawai'i Electronic Procurement System (HePS) which provides real-time and immediate access to by all interested contractors, consultants and

vendors to construction solicitations, bidder submittals, and public notice of awards on a single, online platform.

4. To ensure the prudent and transparent management of public funds, the University has acquired a collaborative, cloud-based construction project management system called e-Builder®. The goal is to provide visibility into the status of our construction projects so all stakeholders have access to real-time information and ensure projects are delivered on-time and on-budget. As a web-based solution, it captures project data and utilizes electronic workflow to track business processes and generate reports that support a capital program at both the micro and macro level.
5. To reduce the time required for the procurement of professional services and construction in nine different areas, the University has begun utilizing Requirements or Indefinite Delivery Indefinite Quantity (IDIQ) contracts systemwide. By having contracts already in place when work is needed in these areas, the University is able to simply issue a work order to the contracted vendor, greatly reducing the time spent on procurement.
6. To ensure the delivery of high quality projects, the University has expanded the use of the competitive sealed proposal procurement method to procure both Design-Build and construction projects (fully designed). This provides the University with the ability to award based on best value versus the lowest price.

Additionally, from fiscal years 2018 through 2020, the University processed a total 250 construction and construction-related procurement contracts and received a total of only eight protests. All of the protests were resolved and none of the protesters requested a hearing with the Department of Commerce and Consumer Affairs.

The University has tremendous regard for the Administrator and the entire State Procurement Office team. We appreciate the long-standing relationship based on respect and professional courtesy. However, under the structure imposed by Act 87 in 2013, the University was operating under a bifurcated procurement system. There was one set of procedures, templates, forms and approval work flows specific to goods and services, for which the President served as the chief procurement officer; and another set of processes for construction and construction-related professional services that utilized the SPO forms, templates, and procedures, for which the SPO Administrator served as the chief procurement officer for the University. This dual authority structure also caused confusion for UH personnel with procurement requirements, support staff processing procurement and related documents, and, more importantly, the vendor and contracting community who bid on University projects.

With the finding by SPO set forth in its Report to the Legislature that “UH is conducting construction procurements in a compliant, efficient, and transparent manner,” and the additional improvements that the University has made specifically to the management and solicitation of its construction projects, the University believes full chief procurement officer authority should be permanently restored to the President. This is particularly important at a time when the University is expected to aggressively address its deferred maintenance backlog. With the additional safeguards and imposition of industry best practices, we believe the University has demonstrated that it can and will continue to conduct its construction procurements in a compliant, efficient, and transparent manner.

Thank you for the opportunity to testify in support of HB 1067 HD1 SD1 and respectfully request that the President be permanently reinstated as the Chief Procurement Officer for construction-related procurements of the University and the effective date be amended to June 29, 2021.