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**WRITTEN COMMENTS
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE**

**TO THE
SENATE COMMITTEE
ON
JUDICIARY AND GOVERNMENT OPERATIONS**

February 27, 2009

9:30 AM

SB 687, SD1

RELATING TO PROCUREMENT.

Chair Taniguchi, Vice-Chair Takamine and committee members, thank you for the opportunity to provide comments on SB 687, SD1. This bill creates a responsible construction contractor law for government procurements of construction projects.

The State Procurement Office does not support this bill. While we understand the intent to utilize vendors who are compliant with Hawaii statutes and has met certain set requirements, it would not be reasonable or feasible to require the General Contractor to list applicable subcontractors and its sub sub-subcontractors. The current process already contains delays in obtaining a comprehensive listing of the subcontractors. To require a General Contractor to list all "associated vendors receiving a subcontract of \$50,000 or more in response to a construction solicitation and be primarily responsible for proof of training, prevailing wages, various insurance, and other requirements will significantly increase the administrative costs and lengthen the contracting process.

If the intent of this bill is to ensure that a General Contractor and associated vendors be compliant with all state laws governing vendors doing business in the State, we recommend that HRS §103D-310(c) be amended to be applicable to any vendor(s) performing work on a State or county construction contract that will result in payment of \$50,000 or more. The Attachment is provided for your consideration of proposed amendments to ensure awards are to responsible construction contractors.

Currently, HRS §103D-310(c) does not address certain prerequisites in the bill such as the apprenticeship program, journeyman ratio, certain insurance, commitment to hiring Hawaii residents, and a process for resolving work-related issues as these are separate issues and compliance would create additional delays. Additionally, penalties for noncompliance with any state law are already provided in HRS §103D-106, and may result in suspension and debarment pursuant to HRS §103D-702. Thank you.

ATTACHMENT

§103D-310 Responsibility of offerors. (a) Unless the policy board, by rules, specifies otherwise, before submitting an offer, a prospective offeror, not less than ten calendar days prior to the day designated for opening offers, shall give written notice of the intention to submit an offer to the procurement officer responsible for that particular procurement.

(b) Whether or not an intention to bid is required, the procurement officer shall determine whether the prospective offeror has the financial ability, resources, skills, capability, and business integrity necessary to perform the work. For this purpose, the officer, in the officer's discretion, may require any prospective offeror to submit answers, under oath, to questions contained in a standard form of questionnaire to be prepared by the policy board. Whenever it appears from answers to the questionnaire or otherwise, that the prospective offeror is not fully qualified and able to perform the intended work, a written determination of nonresponsibility of an offeror shall be made by the head of the purchasing agency, in accordance with rules adopted by the policy board. The unreasonable failure of an offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such offeror. The decision of the head of the purchasing agency shall be final unless the offeror applies for administrative review pursuant to section 103D-709.

(c) All offerors, upon award of contract, shall comply with all laws governing entities doing business in the State, including chapters 237, 383, 386, 392, and 393; **provided construction contracts \$250,000 or more shall require compliance by all subcontractors to any subcontract of \$50,000 or more in connection with a contract awarded to a contractor.** Offerors shall produce documents to the procuring officer to demonstrate compliance with this subsection. Any offeror making a false affirmation or certification under this subsection shall be suspended from further offerings or awards pursuant to section 103D-702. The procuring officer shall verify compliance with this subsection for all contracts awarded pursuant to sections 103D-302, 103D-303, 103D-304, and 103D-306; provided that the attorney general may waive the requirements of this subsection for contracts for legal services if the attorney general certifies in writing that comparable legal services are not available in this State.

(d) Information furnished by an offeror pursuant to this section shall not be disclosed to any person except to law enforcement agencies as provided by chapter 92F.



HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

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Local 221

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Local Council 50

Painters & Allied Trades
Local 1791

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Surveying Engineers Local 3

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International Assoc. of

Glaziers & Frost Insulators
Allied Workers Local 132

February 26, 2009

Honorable Senator Brian T. Taniguchi, Chair
Honorable Senator Dwight Y. Takamine, Vice Chair
Members of the Senate Committee on Judiciary and Government
Operations
Hawaii State Capital
415 South Beretania Street
Honolulu, HI 96813

RE: **IN SUPPORT OF SB 687, SD1**
Relating to Procurement
Decision Making: Friday, Feb. 27, 2009, 9:30 a.m., Conf. Room 016

Dear Chair Taniguchi, Vice Chair Takamine and the Senate Committee
on Judiciary and Government Operations:

For the record my name is Buzz Hong the Executive Director for the
Hawaii Building & Construction Trades Council, AFL-CIO. Our
Council is comprised of 16-construction unions and a membership
of 26,000 statewide.

The Council SUPPORTS the passage of SB687, SD1 which enacts
the responsible construction contractor law for government
procurements of construction projects.

A bidder's background, experience, and performance is crucial to
their success and the success of the project. SB687, SD1 declares
the need to show proof of workers' compensation and medical
insurance, apprenticeship program, comply with prevailing wages,
provide a neutral process for resolving work-related issues, be
appropriately licensed, and commit to employing a percentage of
qualified Hawaii residents.

Thank you for the opportunity to submit this testimony in support
of SB687, SD1.

Sincerely,

William "Buzz" Hong
Executive Director

Testimony in **Support** of
SB 687 SD1 Relating to Procurement

By
Al Lardizabal, Director of Government Relations
Laborers' International Union of North America Local 368

To the Senate Committee on Judiciary and Government Operations
Friday, February 27, 2009, 9:30 a.m.
Room 016, State Capitol

Honorable Brian T. Taniguchi, Chair; Honorable Dwight Y. Takamine, Vice
Chair and Members of the Committee:

The Laborers' Union **supports** SB 687 SD1 regarding responsible contractor bidding on state construction projects. This bill is a Hawaii Building Trades Council submission.

Government agencies¹ in other jurisdictions have similar concerns as Hawaii does in ensuring that contractors will be selected based upon demonstrated ability to provide high quality services and thereby enhance the value of government property, as evidenced by their record of compliance with applicable statutes and payment of fair compensation and benefits to workers, as well as their experience, reputation, responsiveness, fees and dependability. We believe that a fairly compensated and trained workforce, and a company that complies with the laws, delivers a higher quality of service and product to government.

States have separate responsible contractor laws similar to federal requirements that a company's compliance with labor, environmental, and health and safety laws is relevant to the "responsibility" determination. This express move to acknowledge the importance of compliance with laws to the responsibility determination demonstrates the growing consensus that a company's respect for law is critical to a determination of whether it is a reliable partner on public contracts.

¹ Ohio Public Employees Retirement System, federal government agencies, (POGO) Project On Government Oversight; City of Worcester, Massachusetts; City of Somerville, Massachusetts; California, Delaware, New Jersey, Oregon, New York, Michigan etc.

At the outset, we state that Hawaii contractors by and large, are responsible contractors. This is a small community. The reputation and performance of a local business is crucial to its success. It is when there is an influx of non-Hawaii companies that have little or no record of performing on government contracts in Hawaii that creates concerns. The owners are in foreign countries or other states and will move to where the projects are with the intent of making a profit and moving on. At times they will “import” workers who will work for substandard wages and benefits and not complain out of fear. Often times too, workers will be misclassified so as to acquire the lower wages. And when enforcement is lacking, this practice continues.

This is a major reason the federal government has amended Federal Acquisition Rules (FAR) and imposed an anti-scofflaw rule² to make it clear to businesses that there are consequences for breaking the law. And the consequence is that a law breaker can not do further business with government.

In these “perilous economic times” where dozens of economic stimulus construction projects will induce unknown contractors to bid for Hawaii projects, the bidder’s background, experience and performance require scrutiny and closer examination. There is a well known axiom, “You get what you pay for”. The lowest bid is not always necessarily the “best” bid. And in the rush to put out economic stimulus projects as fast as the system will allow, time is limited to check out the bidders.

Page 4, line 11 does not include a percentage figure. We suggest at least 5% for bid adjustment.

Thank you for the opportunity to present this testimony.

² 41U.S.C. 253b (“shall award a contract ...to the responsible source”; 403(7) (D) “Responsible source” is defined by statute as, inter alia, a prospective contractor who “has a satisfactory record of integrity and business ethics.”

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

February 5, 2009

Senator Dwight Takamine, Chair
Committee on Labor
State Capitol, Room 224
Honolulu, Hawaii 96813

RE: SB687 "Relating to Procurement"

Enacts the Responsible Contractor Law for government procurements of construction projects.

Chair Takamine and Members of the Committee on Labor:

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii is strongly opposed to SB687, "Relating to Procurement" (also referred to as the Responsible Contractor Law" for the following reasons:

1. The "exemption by collective bargaining agreement" for union contractors is illegal and unconstitutional. The statute will only apply to non-union contractors.
2. The bill is objectionable because it requires a bona fide Apprenticeship Program, but
 - a. it does not require the unions to open their apprenticeship programs to everyone,
 - b. it requires an apprenticeship program even if no apprentices are required for the project, and
 - c. it does not expedite and provide for the state certification of individual company apprenticeship programs
3. The bill requires journeyman/apprenticeship ratios that will be dictated by the unions rather than by efficiency and cost effectiveness. This will result in increased costs to the State and to the Counties.
4. The bill also imposes health and medical insurance requirements which would be pre-empted by ERISA.
5. The bill also requires a vague and ambiguous "fair and neutral process for resolving work-related issues" which may mean a requirement for an employment agreement with a "grievance" procedure".

6. It requires "certification under oath" on a monthly basis, and subjects the employer to penalties of perjury. This would be unreasonably burdensome to a small contractor and subcontractor. It subjects a contractor to withholding of payments, suspension or debarment.
7. It will automatically increase bid protests for non-compliance with these additional requirements since they are prerequisites to be eligible to bid on a public works project.

BIA-Hawaii requests that this bill be held.

Thank you for the opportunity to share our views with you.



Executive Vice President & Chief Executive Officer
BIA-Hawaii



**Associated Builders and Contractors of Hawaii
80 Sand Island Access Road, M-119
Honolulu, Hawaii 96819**

February 26, 2009

COMMENTS to be PRESENTED to the
SENATE COMMITTEE on JUDICIARY AND GOVERNMENT OPERATIONS
For decision making on Friday, February 27, 2009, 0930, Room 016

by

Karl F. Borgstrom, President
ASSOCIATED BUILDERS & CONTRACTORS OF HAWAII

IN OPPOSITION TO

**SENATE BILL 687 SD1
RELATING TO PROCUREMENT**

CHAIR AND MEMBERS OF THE COMMITTEE:

The Associated Builders and Contractors is a professional trade association representing Merit Shop construction contractors, suppliers and service providers throughout the State of Hawaii. ABC Hawaii is the sponsor of a DLIR-recognized Apprenticeship Program and is dedicated to maintaining that program as a key player in the State's workforce development efforts.

ABC Hawaii strongly objects to SB 687 SD1 for reasons that include the following:

- SB 687 will have the effect of legislating an unequal playing field in the state construction bidding process in favor of union contractors by excluding them from the prerequisites presumed to define a "responsible contractor.
- SB 687 would mandate the maintenance and participation in a DLIR-approved apprenticeship program in any trade pertaining to contracted or subcontracted work whether or not the use of apprentices is appropriate to the size and scope of the project and regardless of the availability of licensed and skilled journey workers already employed by the firm.
- In these difficult economic times, and particularly for small contractors, the cost of having to maintain an active involvement in an Apprentice Program, whether or not they have need for or are using apprentices, could be significant.

For these reasons, **Associated Builders and Contractor of Hawaii opposes SB 687 SD1.**