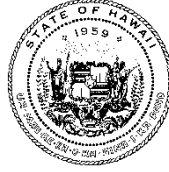


LATE

NEIL ABERCROMBIE
GOVERNOR



Dean H. Seki
Comptroller

Maria E. Zielinski
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
P.O. BOX 119
HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
DEAN H. SEKI, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
FINANCE
ON
February 25, 2013
H.B. 1374, H.D. 1

RELATING TO PROCUREMENT

Chair Luke and members of the Committee, thank you for the opportunity to submit written testimony on H.B. 1374, H.D. 1.

The Department of Accounting and General Services (DAGS) supports the intent of H.B. 1374, H.D. 1, and offers the following comments and amendments:

The proposed changes in H.B. 1374, H.D. 1 are not necessary, because criteria such as past performance may be included as criteria under the competitive sealed proposal (CSP) process pursuant to §103D-303, Hawaii Revised Statutes (HRS). The integrity of a truly objective competitive sealed bid (CSB) process under §103D-302, HRS, should be maintained within the procurement code.

Because the basic premise of the procurement code is to always use the CSB process unless it is determined to be "either not practicable or not advantageous to the State to procure by

competitive sealed bidding,” DAGS suggests changes to the HRS to allow for agencies to choose a procurement method without having to make the determination and that the Procurement Policy Board revise the Hawaii Administrative Rules accordingly. The following are DAGS’ suggested amendments to the HRS:

Amend §103D-301 to read as follows:

“Methods of source selection. Unless otherwise authorized by law, all contracts shall be awarded ~~[by competitive sealed bidding]~~ pursuant to ~~[section 103D-302, except as provided in:]~~ the following sections, as applicable:

(1) Section 103D-302 (Competitive sealed bids);

~~[(4)]~~ (2) Section 103D-303 (Competitive sealed proposals);

~~[(2)]~~ (3) Section 103D-304 (Professional services procurement);

~~[(3)]~~ (4) Section 103D-305 (Small purchases);

~~[(4)]~~ (5) Section 103D-306 (Sole source procurement); and

~~[(5)]~~ (6) Section 103D-307 (Emergency procurements).”

Amend §103D-302(a) to read as follows:

“Competitive sealed bidding. (a) ~~[Contracts shall be awarded by competitive sealed bidding except as otherwise provided in section 103D-301.]~~ Awards of contracts by competitive sealed bidding may be made after single or multi-step bidding. Competitive sealed bidding does not include negotiations with bidders after the receipt and opening of bids. Award is based on the criteria set forth in the invitation for bids.”

Amend §103D-303(a) to read as follows:

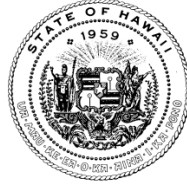
“Competitive sealed proposals. (a) Competitive sealed proposals may be used to procure goods, services, or construction [~~that are either not practicable or not advantageous to the State to procure by competitive sealed bidding~~].”

In addition, because the current language for CSP under §103D-303, HRS, allows for evaluation criteria such as past performance, we do not feel it is necessary to add the proposed language change as it unintentionally imposes a restriction on what factors agencies shall set forth in the request for proposals.

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

NEIL ABERCROMBIE
GOVERNOR

LATE



Testimony of
GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
JADE BUTAY
FORD N. FUCHIGAMI
RANDY GRUNE
JADINE URASAKI

IN REPLY REFER TO:
(808) 586-2165

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

February 25, 2013
1:30 p.m.
State Capitol, Room 308

H.B. 1374, H.D.1
RELATING TO PROCUREMENT

House Committee on Finance

The DOT **opposes** H.B. 1374, H.D. 1, as we believe it is not necessary.

The proposed changes to the Competitive Sealed Bids (CSB) method of procurement contradicts the basic premise of the procurement code which is to always use the CSB process unless it is determine to be either not practicable or not advantageous to the State to procure by competitive sealed bidding.

This bill proposes to factor past performance as a criteria in the evaluation of Competitive Sealed Bids, Competitive Sealed Proposals, and Professional Service Contracts. The current procurement code considers the proposed factors of past performance in Competitive Sealed Proposals and Professional Service Contracts.

A revision to the Competitive Sealed Bid provision in the Procurement Code may limit the opportunity that a new contractor may have when seeking to contract with the state. Its effect could lead to more bid protests. Moreover, bid evaluation may be prolonged as coordination between state agencies to determine whether a contractor's past performance has been satisfactory may affect the timeliness of the DOT project delivery process.

Thank you for the opportunity to provide testimony.



NEIL ABERCROMBIE
GOVERNOR



LATE

KATHRYN S. MATAYOSHI
SUPERINTENDENT

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

Date: 02/25/2013

Committee: House Finance

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: HB 1374,HD1(hscr417) RELATING TO PROCUREMENT.

Purpose of Bill: Allows past performance to be factored into future bid selection of a contractor including a review of delays, cost overruns, and compliance with project requirements.

Department's Position:

The Department of Education, (DOE) supports this bill. However, the DOE believes that the best avenue of improving the procurement system without jeopardizing existing protections is to remove the preference for the bid source selection method in HRS § 103D-301. This would remove the preference for the low bid process in the state procurement code and would achieve the intent of this bill without incurring problems of subjectivity.

Allowing purchasing agencies to use competitive sealed proposals and other options already in the procurement code equally without requiring justification to deviate from the preferred method of low bid would effectuate this.

Another option would be to establish an evaluation process as proposed in this legislation within HRS § 103D-310 Responsibility of Offerors which would expressly allow the procuring agency to disqualify a potential bidder based on poor past performance, would better achieve the intent of this bill.

Thank you for this opportunity to provide testimony.

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Scotty Anderson

Pacific Rim Partners

W. Bruce Barrett

Castle & Cooke Homes Hawaii, Inc.

Testimony to the House Committee on Finance

Monday, February 25, 2013

1:30 p.m.

State Capitol - Conference Room 308

RE: H.B. 1374 H.D.1, RELATING TO PROCUREMENT

Chair Luke, Vice-Chairs Nishimoto and Johanson, and members of the Committee:

My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii), the voice of the construction industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, affiliated with the National Association of Home Builders.

BIA-Hawaii **supports the intent** of H.B. 1374 H.D. 1, which allows past performance to be factored into future bid selection of a contractor including a review of delays, cost overruns, and compliance with project requirements.

BIA-Hawaii agrees that this measure will help ensure that the State is able to select the most appropriate contractor at the best value. However, we believe criteria such as past performance may be included as criteria under the competitive sealed proposal (CSP) process pursuant to §103D-303, Hawaii Revised Statutes (HRS).

We also suggest that some terms being proposed might be more specific. As an example, ". . .fair in the eyes of a reasonable objective taxpayer . . ." is too ambiguous. Perhaps language such as, "award shall be fair and competitive" might be more appropriate.

Thank you for the opportunity to express to you our views.

Senator Will Espero, Chair
Committee on Public Safety, Intergovernmental and Military Affairs
Thursday, February 7, 2013
S.B. 212

Thank you for the opportunity to express to you our views.

LATE

House of Representatives
The Twenty-Seventh Legislature
Committee on Finance
February 25, 2013, 1:30 p.m.
Conference Room 308

Statement of the Hawaii Regional Council of Carpenters on HB 1374, HD 1

The evaluation of the Carpenters Union of HB 1374 is that it provides needed and positive requirements for more efficient use of taxpayer dollars. Currently, construction contractors with records of delays, overruns and violations on public works may secure further public works awards with no consideration of such records.

While testimony has been submitted saying that current law allows such factors to be considered, the overwhelming practice is to ignore the poor performance of low bidders. There is a need to, as others have testified, to remove the requirement to justify the consideration of factors other than “low-bid”, and to have procuring agencies develop systems to give weight to contractors’ performance records on public works projects.

The solution may not be easy and business-as-usual, but doing nothing is not acceptable.

With the passage of HB 1374 by the Committee on Finance, the legislative can seek models used in other jurisdictions, including the federal government, to prevent repetitive public works awards to those who have cost the public money, and timely use of needed facilities.