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**Testimony to the House Committee on Economic Development and Business
Friday, February 8, 2013
9:00 am
State Capitol - Conference Room 312**

RE: HOUSE BILL NO. 1374 RELATING TO PROCUREMENT

Chair Tsuji, Vice Chair Ward, and members of the committee:

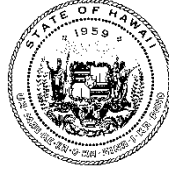
The Chamber of Commerce of Hawaii provides the following **comments on H.B. 1374**. The bill proposes to amend Section 103D HRS and allow past performance to be factored into future bid selection of a contractor including a review of delays, cost overruns, and compliance with project requirements.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the “Voice of Business” in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state’s economic climate and to foster positive action on issues of common concern.

The Chamber supports the overall intent of this bill in that it will help ensure that the State is able to select the most qualified contractor based on past experience and the best value. However, we suggest, that some of the language in the bill be changed to be more quantifiable. As an example, “. . .fair in the eyes of a reasonable objective taxpayer . . .” is too ambiguous. Perhaps something stating, “award shall be fair and competitive” might be more appropriate.

Thank you for this opportunity to express our views.

NEIL ABERCROMBIE
GOVERNOR



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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
ECONOMIC DEVELOPMENT & BUSINESS
ON
February 8, 2013

H.B. 1374

RELATING TO PROCUREMENT

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

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

The proposed changes in H.B. 1374 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:

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“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.

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

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Testimony to the House Committee on Economic Development & Business

Friday, February 8, 2013

9:00 a.m.

State Capitol - Conference Room 312

RE: H.B. 1374, RELATING TO PROCUREMENT

Chair Tsuji, Vice-Chair Ward, 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**, 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. We suggest, however, 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 something like, "award shall be fair and competitive" might be more appropriate.

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

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

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Uploaded via Capitol Website

February 8, 2013

TO: HONORABLE CLIFT TSUJI, CHAIR, HONORABLE GENE WARD,
VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON
ECONOMIC DEVELOPMENT & BUSINESS

SUBJECT: **COMMENTS REGARDING H.B.1374, RELATING TO
PROCUREMENT.** 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.

HEARING

DATE: Friday, February 8, 2013
TIME: 9:00 a.m.
PLACE: Room 312

Dear Chairs Tsuji, Vice Chair Ward and Members of the Committee:

The General Contractors Association (GCA) is an organization comprised of over six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

H.B. 1374 proposes to amend Sections 103D-302, 103D-303, and 103D-310, Hawaii Revised Statutes (HRS), which would allow past performance to be factored into future bid selection of a contractor including a review of delays, cost overruns, and compliance with project requirements.

While GCA supports the intent of this measure, it finds that this legislation is unnecessary because such qualification criteria are already permitted under 103D-302 and 103D-303. Thus, while GCA is in support of ensuring that bidders are qualified and meet certain criteria, especially for highly complex projects, this bill and the proposed changes to certain sections of Chapter 103D is unnecessary.

Thank you for this opportunity to present our views on this measure.



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Hawaii Chapter

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February 8, 2013

Committee on Economic Development and Business
Rep. Clift Tsuji, Chair
Rep. Gene Ward, Vice Chair

Associated Builders and Contractors, Hawaii Chapter Testimony in
Opposition to HB 1374

Chair Tsuji, Vice Chair Ward and members of the committee. My name is Malcolm Barcarse, Jr. I am the legislative committee chair for Associated Builders and Contractors, Hawaii Chapter. We are an organization of 165 members serving the merit shop construction industry through apprenticeship programs and other services. We also serve as the voice of the approximately 4500 merit shop construction companies in Hawaii.

Associated Builders and Contractors, Hawaii Chapter is **opposed** to this bill as currently written. We are not opposed to consideration of past performance per se, however if the Legislature wants to move the procurement code in the direction of past performance, standards will have developed to prevent overly subjective bid evaluations which can create the potential for abuse.

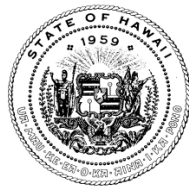
This bill as currently written does not provide any direction for the contracting officer on how to evaluate past performance. In order to have a fair process to evaluate past performance, standards need to be adopted including but not limited to which types of contracts should consider past performance, what weight to give past performance versus price, how to collect data on past performance, and what constitutes satisfactory past performance. We believe the best way to remedy this issue would be to give the State Procurement Office rulemaking authority pursuant to Chapter 91 to adopt these and other relevant standards.

In addition to adopting standards, we also believe that the Legislature should reexamine the procedures regarding bid protests. In

America's Best Contractors

recent years, the Legislature has adopted changes to the procurement code which make it more difficult to litigate bid protests through the Office of Administrative Hearings of the Department of Commerce and Consumer Affairs. Past performance evaluations by nature are very subjective and are open to interpretation and dispute. If the Legislature wishes to proceed with this bill, we would strongly urge that they will also consider rolling back the recent changes in bid protests procedures as the bid protests will become increasingly necessary due to the subjectivity of these evaluations.

Thank you for the opportunity to testify.



LATE

Testimony of
GLENN M. OKIMOTO
DIRECTOR

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

STATE OF HAWAII
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February 8, 2013
9:00 a.m.
Hawaii State Capitol, Room 312

**HB 1374
RELATING TO PROCUREMENT**

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS

The DOT **opposes** this bill.

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.

