



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 19, 2014

H.B. 2383

RELATING TO COMPETITIVE SEALED BIDDING

Chair Luke and members of the Committee, thank you for the opportunity to submit written testimony on H.B. 2383.

The Department of Accounting and General Services (DAGS) opposes H.B. 2383 because government agencies are unable to pre-determine with certainty which licenses are required to perform the work. DAGS opposes H.B. 2383 for the following reasons:

1. Performance of the work may differ from contractor to contractor and by listing what licenses are required, government would be dictating how the work should be performed. The contractor is best suited to determine the means and methods for construction in order to perform the work in the most efficient and economical way based on their own abilities and resources.



2. Agencies do not have the expertise to determine which licenses are required.

Incorrect listing of the required licenses will lead to delays in bidding in order to correct the improper listing by bid addenda. The incorrect listing could also lead to protest of the solicitation and/or award.

3. Listing and ensuring that the bidder and/or its subcontractor have the appropriate licenses to perform the work should be the sole responsibility of the bidder.

We also note that Senate Concurrent Resolution No. 92, Senate Draft 2, adopted by the 2013 Legislative Session, requested that a Procurement Code Task Force be established by the Comptroller to identify and propose amendments, if any, to the state procurement code and is also requested to submit its findings and recommendations to the legislature no later than twenty days prior to the convening of the Regular Session of 2015. The Task Force is in the process of gathering data on procurement protests and preferences. It is premature at this time to propose any amendments to the procurement code on such matters as subcontractor listing prior to having the data to identify where problems actually exist or are perceived to exist, if any at all.

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



DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



CHRIS T. TAKASHIGE, P.E., CCM
DIRECTOR

MARK YONAMINE, P.E.
DEPUTY DIRECTOR

February 18, 2014

The Honorable Sylvia Luke, Chair
and Members
House Committee on Finance
State Capitol, Room 306
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Luke and Members:

House Bill No. 2383, Relating to Competitive Sealed Bidding

The Department of Design and Construction (DDC) respectfully **opposes** House Bill 2383, which requires procuring agencies to include in invitations for bids on construction contracts a listing of the licenses that are required to perform work under the contract.

DDC bids out approximately 100 construction projects annually. Identification of the contractor licenses needed to accomplish the work is the responsibility of the bidders during preparation of their bids. Different bidders may employ different means and methods to accomplish the work, thus requiring different contractor licenses. As the project owner and designer, the City is not in the position to determine the means and methods for the bidders.

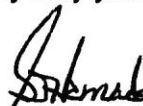
We anticipate that the number of bid protests filed would increase if House Bill 2383 became law, as it would provide additional grounds for bidders to challenge the bids of others. Bid protests cause project delays and increase project costs in the form of City resources.

DDC refers questions and disputes regarding contractor licensing requirements to the State licensing agency, the Department of Consumer and Corporate Affairs.

For these reasons, DDC respectfully **opposes** House Bill 2383.

Thank you for the opportunity to testify.

Very truly yours,

for 
Chris Takashige, P.E., CCM
Director

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.

Uploaded via Capitol Website

February 19, 2014

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO AND HONORABLE AARON JOHANSON, VICE CHAIRS AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: **OPPOSITION TO H.B. 2383, RELATING COMPETITIVE SEALED BIDDING.** Requires procuring agencies to include in invitations for bids on construction contracts a listing of the licenses that are required to perform work under the contract.

HEARING

DATE: Wednesday, February 19, 2014
TIME: 2:00 p.m.
PLACE: Capitol Room 308

Dear Chair Luke, Vice Chairs Nishimoto and Johanson and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately 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.

GCA is in **opposition to** of H.B. 2383, Relating to Competitive Sealed Bidding, which proposes to amend Section 103D-302(b), HRS by requiring that the agency also list the licenses required to perform work under the contract. The Senate companion bill was deferred by the Senate Committee on Economic Development, Government Operations and Housing and was opposed by a number of government agencies.

GCA opposes this measure because it will further confuse the subcontractor listing requirement, increase bid protests and further delay delivery of much needed public work projects.

2013 Procurement Task Force pursuant to SCR 92, SD2

GCA is actively participating in the ongoing Procurement Task Force convened by the legislature last year pursuant to SCR 92, SD2 (2013). The Resolution Requests the Comptroller to Establish a Task Force to Study the State Procurement Code and Identify Amendments that Would Increase Economy, Efficiency, Effectiveness, and Impartiality in the Procurement of Public Works Construction Projects. The Task Force is scheduled to report to the legislature next session, but has since met a number of times and has preliminarily identified items of concern. The areas of concerns identified include the subcontractor listing law, preferences, bid protests and the elimination of bad contractors. During recent discussions among private and public

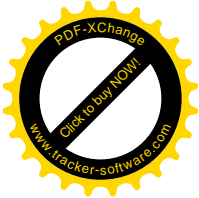
sector task force members, the issue of subcontractor listing and how they lead to bid protests has been extensively discussed.

Background of Subcontractor Listing Law

Under Hawaii's Procurement Code, Section 103D-302(b), HRS requires the bidding contractor to list all subcontractors to be employed on public works projects unless the prime contractor has the required specialty license and will do the work themselves. The Hawaii Supreme Court Decision in Okada Trucking Co., Ltd. v. Board of Water Supply, et. al., 97 Haw. 450 (2002), is widely being interpreted to say that an 'A' general engineering contractor and 'B' general building contractors are prohibited from undertaking any work, solely or as a part of a larger project, which would require the general contractor to act as a specialty contractor in any area where the general contractor has no license. Due to the 2002 ruling in *Okada Trucking*, the subcontractor listing has become a dominant factor in bid protests. Bids that do not comply with this requirement may be considered non-responsive and be disqualified for consideration.

The subcontractor listing requirement has been used by many non-low bidders to identify faults of winning bidders who either fail to list a subcontractor or inadvertently and erroneously complete the list. If this measure was to be adopted and require not only the listing of the subcontractor, the nature and scope of their work, but in addition, require that the agency list the subcontractors required for the project – it could be a recipe for further confusion and increased bid protests.

GCA strongly opposes H.B. 2383 and recommends deferral of this measure. Thank you for this opportunity to share our concerns about this measure.



BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION
THE VOICE OF THE CONSTRUCTION INDUSTRY

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simplicityHR by ALTRES

Testimony to the House Committee on Finance
Wednesday, February 19, 2014
2:00 p.m.
State Capitol - Room 308

SUBJECT: H.B. 2383 - Relating to Competitive Sealed Bidding

Dear Chair Luke, Vice-Chairs Nishimoto and Johansson, 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, and affiliated with the National Association of Home Builders.

BIA-Hawaii **strongly opposes** H.B. 2383, which requires procuring agencies to include in invitations for bids on construction contracts a listing of the licenses that are required to perform work under the contract.

BIA-Hawaii is opposed to H.B. 2383 because: 1) a contracting officer may not be fully aware of exactly what the general contractor needs to fulfill the contract; 2) many subcontractor trades have overlapping qualifications, thus listing one license without the other qualified license could lead to an erroneous listing; and 3) not listing the accurate licenses required for the job will lead to more opportunities for bid protests, ultimately leading to delays and increasing the project costs to the State and taxpayers.

We appreciate the opportunity to express our **strong opposition** to H.B. 2383.

NEIL ABERCROMBIE
GOVERNOR



KATHRYN S. MATAYOSHI
SUPERINTENDENT

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

LATE

Date: 02/19/2014

Committee: House Finance

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: HB 2383 RELATING TO COMPETITIVE SEALED BIDDING.

Purpose of Bill: Requires procuring agencies to include in invitations for bids on construction contracts a listing of the licenses that are required to perform work under the contract.

Department's Position:

The Department of Education opposes this bill.

The Department of Education opposes HB 2383 for the following reasons:

1. The bill is not necessary as the State Procurement Codes already requires that the work be accomplished by workers with the appropriate license(s). In addition, our bidding documents already require that the bidder list all the subcontractors he will employ on the bid form.
2. Performance of work may differ from contractor to contractor. In addition, due to the overlapping nature of the licensing requirements, in many cases, more than one license may be able to do the same item of work.
3. Ensuring that all necessary license(s) are obtained to do the work is the responsibility of the Contractor.

Thank you for this opportunity to provide testimony on this bill.

finance8-Danyl

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 18, 2014 8:45 PM
To: FINTestimony
Cc: greg@ccs-hawaii.com
Subject: *Submitted testimony for HB2383 on Feb 19, 2014 14:00PM*

LATE

HB2383

Submitted on: 2/18/2014

Testimony for FIN on Feb 19, 2014 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Greg Thielen	Individual	Oppose	No

Comments:

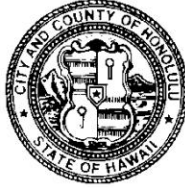
Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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LATE

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU

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MAYOR

NELSON H. KOYANAGI, JR.
DIRECTOR

GARY T. KUOKAWA
DEPUTY DIRECTOR

TESTIMONY OF NELSON H. KOYANAGI, JR.
DIRECTOR OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
BEFORE THE HOUSE COMMITTEE ON FINANCE
Wednesday, February 19, 2014, 2:00 p.m., Conference Room 308

HOUSE BILL 2383, "RELATING TO PROCUREMENT"
Position: In Opposition

TO: The Honorable Sylvia Luke, Chair
and Members of the Committee on Finance

The Department of Budget and Fiscal Services, City and County of Honolulu, **opposes** House Bill No. 2383, Relating to Competitive Sealed Bidding.

We appreciate the bill's intent and agree that a majority of bid protests for construction projects are regarding the listing of subcontractors. However, we are concerned that the bill's solution will be problematic to implement. We believe House Bill No. 2175 and Senate Bill No. 2464 provide a more effective solution to the problem. Our specific concerns for this bill are as follows:

The bill will require the City to determine the applicable contractor's licenses for a project. While the City may attempt to determine the applicable licenses, the true authority should be, and is, the State of Hawaii Contractors License Board.

Continuing on the previous concern, the City in its construction specifications rarely mandates the means and methods for the project. The City establishes the requirements for the project and relies on the expertise of the individual Contractor to determine its proposed construction means and methods. The means and methods chosen by the Contractor actually determine the proper license – not the City.

For the reasons stated above, the City respectfully requests that this bill be held in Committee.

Mahalo for the opportunity to testify on this bill. Should you have any questions or concerns, please feel free to contact the Department of Budget & Fiscal Services' Division of Purchasing at 808-768-5535 or bfspurchasing@honolulu.gov.

Testimony of Glenn Ida
Representing
The Plumbers and Fitters United Association, Local 675
1109 Bethel St. Lower Level
Honolulu, Hi. 96813



Sen. Sylvia Luke, Chair
Sen. Scott Nishimoto, Vice-Chair
Rep. Aaron Ling Johanson, Vice-Chair
Committee on Finance
Wednesday, 2-19-2014
2:00 PM, Room 308

Re: Support of HB2383

Aloha Chair Luke, Vice-Chair Nishimoto, Vice-Chair Johanson and Members of the Committee,

My name is Glenn Ida representing the 2000 active members and retirees of the Plumbers and Fitters UA, Local 675. Local 675 is an affiliate of the Hawaii Building and Construction Trades Council.

Local 675 supports SB2383, Relating to competitive Sealed Bidding, which requires procuring agencies to include in invitations for bids on construction contracts a listing of the licenses that are required to perform the work under contract.

We believe that this requirement will ensure that properly licensed and qualified Contractors will perform the work and by listing the all the licenses of contractors and subcontractors at the onset of the bidding process will reduce the protests that result from missing information.

Therefore, Local 675 supports HB2383.

Thank you for this opportunity to testify.

Mahalo,

Glenn Ida
808-295-1280



A'ohe hana nui ka alu'ia
"No Task Is Too Big When Done Together By All"

HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

735 Bishop Street, Suite 412 * Honolulu, Hawaii 96813
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KIKA G. BUKOSKI
Executive Director

February 18, 2014

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Local 221

Honorable Representative Sylvia Luke, Chair
Honorable Representative Scott Nishimoto, Vice Chair
Honorable Representative Aaron Ling Johanson
Members of the Committee on Finance
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: **IN SUPPORT** OF HB2383 RELATING TO COMPETITIVE SEALED BIDDING
Hearing: Wednesday, February 19, 2014, 2:00 p.m. Conference Room 308

Honorable Chair, Vice Chair and Committee Members;

The Hawaii Building & Construction Trades Council, AFL-CIO is a chartered member of the Building and Construction Trades Department, AFL-CIO first organized in 1908 and comprised of 16 out of 17 construction trade unions with 386 state, local and provincial councils in the United States and Canada and an estimated 15,000 members locally. Our primary mission is to provide employment opportunities and living wages for many of Hawaii's working men and women in the construction industry.

The Council SUPPORTS HB2383, which requires the procuring agencies to include in invitations for bids on construction contracts, a listing of the licenses that are required to perform work under the contract.

Bid protests are a component of the competitive sealed bid process that allows bidders to challenge the selected bidder based on factors that may cause the winning bid to be deemed non-responsive or disqualified.

Sub-listing seems to be the "cause of choice" to those who advocate removal of such requirements. Sub-listing is widely known in the industry as a method of preventing unfair contracting and the unscrupulous practice known as bid-shopping.

Recent cases indicate protests being filed and upheld include missing specialty contractors required to perform work on the project. Requiring that a list of the licenses necessary to perform work under the project be included in the invitation to bid would alleviate confusion and the last minute guessing that contractors believe are the cause of most errors in bid submittal.

We humbly request your support and approval of HB2383.

