

SB 2911

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.

NEIL ABERCROMBIE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR

**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS AND HOUSING

February 3, 2014, 3:20 p.m.

SB 2911

RELATING TO COMPETITIVE SEALED BIDDING

Chairs Dela Cruz, Vice-Chairs Slom, and members of the committee, thank you for the opportunity to submit testimony on SB2911. The State Procurement Office (SPO) opposes this bill and comments as follows:

It is at the Procurement Officer's discretion to require specific licensing in a construction contract and can be added to an Invitation For Bid (IFB) or a Request For Proposal (RFP) for any requirement.

The Procurement Task Force, created in response to Senate Concurrent Resolution no. 92, Senate Draft 2, 2013 to identify and propose amendments to the Procurement Code (Code), is in the process of gathering data on this subject matter. SPO requests the task force is given the opportunity to conclude its research on this matter and present it in the time allotted by the Resolution.

The SPO recommends that this bill be held.

Thank you.

NEIL ABERCROMBE
GOVERNOR



Dean H. Seki
Comptroller

Marla 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
SENATE COMMITTEE
ON
ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS AND HOUSING
ON
February 3, 2014

S.B. 2911

RELATING TO COMPETITIVE SEALED BIDDING

Chair Dela Cruz and members of the Committee, thank you for the opportunity to submit written testimony on S.B. 2911.

The Department of Accounting and General Services (DAGS) opposes S.B. 2911 because government agencies are unable to pre-determine with certainty which licenses are required to perform the work. DAGS opposes S.B.2911 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.

NEIL ABERCROMBIE
GOVERNOR



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

February 03, 2014
3:20 p.m.
State Capitol, Room 16

**S.B. 2911
RELATING TO PROCUREMENT**

Senate Committee on Economic Development, Government Operations and Housing

The Department of Transportation (DOT) strongly **opposes** this bill which will require procuring agencies to include a listing of the licenses that are required for contractors and subcontractors to perform work under the contract in its construction invitations for bids.

The DOT is concerned that the proposed bill would have the effect of delaying projects from being advertised due to the requirement to identify all possible required licenses. Moreover, the inadvertent non listing of a required license would open the door to more contract protests.

The DOT is extremely critical of the fact that as the bill is currently drafted, the required project licenses will be based on how the procuring agency interprets how contractors would perform the work. This would shift the responsibility from the contractor to the procuring agency in determining the means and methods of the contractor in performing its work. Additionally, the use of alternate material or processes can affect the types of licenses required for the project.

The contractor currently has the opportunity to request clarification on whether the project scope requires a particular license. Clarification can either be requested at the pre-bid conference meeting after the contractors have reviewed the specifications, or at any time prior to the bid opening date.

Thank you for the opportunity to provide testimony.

Testimony of
GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
FORD N. FUCHIGAMI
RANDY GRUNE
AUDREY HIDANO
JADINE URASAKI

IN REPLY REFER TO:

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

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Testimony to the Senate Committee on Economic Development, Government Operations and Housing Monday, February 3, 2014 3:20 p.m. State Capitol - Room 016

SUBJECT: S.B. 2911 - Relating to Competitive Sealed Bidding

Dear Chair Dela Cruz, Vice-Chair Slom, 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 **opposes** S.B. 2911, 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 S.B. 2911 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 **opposition** to S.B. 2911.



A'ohē 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
(808) 524-2249 - FAX (808) 524-6893

KIKA G. BUKOSKI
Executive Director

February 1, 2014

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Honorable Senator Donovan Dela Cruz, Chair
Honorable Senator Sam Slom, Vice Chair
Members of the Committee on Economic Development, Government Operations and
Housing
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: **IN SUPPORT** OF SB2911 RELATING TO COMPETITIVE SEALED BIDDING
Hearing: Monday, February 3, 2014, 3:20 p.m. Conference Room 016

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 SB2911, which requires procuring agencies to include in invitations for bids on construction contracts, a listing of the licenses required to perform the work on a project.

Including the contractor licenses required to perform the work on a project in the bid specifications prior to bid submittal will alleviate the confusion some prime contractors currently claim to experience when listing subs needed to perform the contract.

Such requirements will improve the overall procurement process and significantly reduce the bid protests related to the sub listing requirement.

For these reasons, we respectfully urge that you approve SB2911 as introduced and pass it out of Committee without amendment.

Mahalo for this opportunity to provide testimony in SUPPORT of SB2911.

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

Committee on Economic Development, Government Operations and Housing
Sen. Donovan Dela Cruz, Chair
Sen. Sam Slom, Vice-Chair
Monday, 2-3-2014
3:20 PM, Room 016

Re: Support of SB2911

Aloha Chair Dela Cruz, Vice-Chair Slom 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 SB2911, 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 SB2911 and it's passage without amendments.

Thank you for this opportunity to testify.

Mahalo,

Glenn Ida
808-295-1280

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 3, 2014

TO: HONORABLE DONOVAN DELA CRUZ, CHAIR, HONORABLE SAM SLOM, VICE CHAIR AND COMMITTEE ON ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS AND HOUSING

SUBJECT: **OPPOSITION TO S.B. 2911, 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: Monday, February 3, 2014
TIME: 3:20 p.m.
PLACE: Capitol Room 016

Dear Chair Dela Cruz, Chair Slom 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 S.B. 2911, Relating to Competitive Sealed Bidding, which proposes to amend Section 103D-302(b), HRS by requiring that the subcontractor listing also include the subcontractor's license number.

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, the subcontractor's license number – it is a recipe for further confusion and increased bid protests.

GCA strongly opposes S.B. 2911 and recommends deferral of this measure. Thank you for this opportunity to share our concerns about this measure.