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

February 3, 2016

**DEPT. COMM. NO. 278**

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Twenty-Eighth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki, Speaker  
and Members of the House of  
Representatives  
Twenty-Eighth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

The Department of Accounting and General Services (DAGS) respectfully submits our report pursuant to SCR 92 Draft 2 of the 2013 Legislative Session, regarding "REQUESTING THE COMPTROLLER TO ESTABLISH A TASK FORCE TO STUDY THE STATE PROCUREMENT CODE AND IDENTIFY AMENDMENTS THAT WOULD INCREASE ECONOMY, EFFICIENCY, EFFECTIVENESS, AND IMPARTIALITY INT THE PROCUREMENT OF PUBLIC WORKS CONSTRUCTION PROJECTS."

Feel free to contact our office at 586-0400, should there be any questions/concerns.

Sincerely,

DOUGLAS MURDOCK  
Comptroller

Enclosure

## 1. INTRODUCTION/BACKGROUND

By enacting Hawaii Revised Statutes (“HRS”) Chapter 103D, the Hawaii Public Procurement Code, the Legislature sought to establish a comprehensive code that would: (1) provide for fair and equitable treatment of all persons dealing with the procurement system; (2) foster broad-based competition among vendors while ensuring accountability, fiscal responsibility, and efficiency in the procurement process; and (3) increase confidence in the integrity of the system. (Standing Committee Report No. S8-93, 1993, Senate Journal at 39; HAR §3-120-1)

Senate Concurrent Resolution 92, Senate Draft 2 of the 2013 Regular Legislation Session, 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 resolution noted the following for the Task Force to consider:

- Chapter 103D, Hawaii Revised Statutes was enacted to increase competition, ensure fairness, and establish greater uniformity in procurement;
- The State procurement code has been amended more than forty times since its enactment in 1993;
- It is important to identify factors that may cause delays in the procurement process, including unnecessary bid preferences, bid protests, and increased contract prices;
- The State recognizes various specialty contractor licenses that a bidder must review to determine whether a particular subcontractor specialty must be listed on a bid;
- Bid protests have arisen due to a variety of issues, resulting in major delays and cost increases on public works construction projects;
- It is important to gather past bid protest data and study bid protest outcomes to further determine if costs have increased solely due to bid protests in public work construction; and
- Cost impacts that the procurement process has had for public works construction projects as well as the existing bid preferences in relation to promoting economy, efficiency, effectiveness, and impartiality in procurement by State and County governments.

The resolution requests the Task Force to:

- Identify and propose amendments, if any, to the State procurement code that may better promote economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects, including but not limited to a review of all bid preferences on public works projects;
- Solicit input from the construction industry and determine whether administrative rules governing contractors reflect the intent of the legislature and Chapter 103D, Hawaii Revised Statutes; and
- Submit its findings and recommendations, including any legislation, if any, no later than twenty (20) days prior to the convening of the Regular Session of 2015.

## 2. TASK FORCE REPRESENTATIVES AND OTHER PARTICIPATING ORGANIZATIONS

The Task Force is comprised of the following organizations and designated Task Force member representatives:

- Department of Accounting & General Services (State)  
Dean H. Seki, Comptroller and Task Force Chair (Former)  
Douglas Murdock, Comptroller and Task Force Chair (Current)
- State Procurement Office (State)  
Aaron Fujioka, Chief Procurement Officer (Former)  
Sarah Allen, Chief Procurement Officer
- Department of Education (State)  
Christian Butt
- Office of Hawaiian Affairs (State)  
Hawley Iona
- Department of Transportation (State)  
Jadine Urasaki, Deputy Director (Former)
- University of Hawaii (State)  
Duff Zwald
- Budget & Fiscal Services Department (City & County of Honolulu)  
Michael Hiu
- Board of Water Supply (City & County of Honolulu)  
Vicki Kitajima
- Honolulu Authority for Rapid Transportation  
Paula Youngling (Former)  
Nicole Chapman
- Subcontractors Association of Hawaii  
Tim Lyons
- General Contractors Association of Hawaii  
Sherman Wong
- Hawaii Building and Construction Trades Council, AFL-CIO  
Kika G. Bukoski
- Hawaii Construction Alliance  
Peter Lee

Other participating organizations that have attended at least one meeting:

- Plumbing & Mechanical Contractors
- Hawaii Ironworkers Stabilization Fund
- Iron Works Local 625 (IWLOCAL 625)
- Sheet Metal Contractors Association – Hawaii
- Building Industry Association (BIA)
- District Council 50
- Hawaii Operating Engineers Stabilization Fund

- Finishing Industry Labor Management Compensation Fund
- Pacific Resource Partnership
- Hawaii Regional Council of Carpenters
- Associated Builders and Contractors

### **3. GENERAL APPROACH**

On August 20, 2013 the Department of Accounting and General Services (DAGS) Comptroller Mr. Dean H. Seki, who is designated the chair of the Task Force, convened the first Task Force meeting.

The resolution designated members representing diverse viewpoints and interests to study the issues and make informed recommendations. To further the spirit of the resolution, Chair Seki encouraged the participation of representatives from all interested organizations in the discussions. During the first meeting, members were reminded that we share the goal of improving the procurement process and that all participants were expected to be respectful of the opinions of others.

It was decided that the Task Force would first discuss and vote to prioritize what the members consider to be the four most important construction-related procurement issues for further evaluation. The issues would then be evaluated through group discussion and the collection of relevant data. The recommendations, if any, of the Task Force on each issue would then be decided by majority vote. All members were encouraged to submit “position papers” explaining the reason(s) behind their vote for inclusion in the final report to provide legislators with supplementary information.

### **4. IDENTIFICATION OF CONSTRUCTION-RELATED PROCUREMENT ISSUES**

The Task Force identified the following construction-related procurement issues:

- Preferences
- Protests
- Subcontractor Listing
- Identify and Address Bad Contractors

### **5. DATA COLLECTION**

To supplement and provide fact-based information for its discussions, the Task Force collected data related to the selected issues for fiscal years (FY) 2013 and 2014. These two fiscal years were selected to provide information over both a lapsing fund and non-lapsing fund fiscal year and to allow the collection of data which is both recent and therefore relatively easily accessible. The types of data collected were specific to the procurement issues and are further discussed therein.

Since preferences were discussed first, collection of this data ended on March 15, 2014. For all other issues data was collected based on award or receipt of protests up until June 30, 2014.

Not all participating Task Force agencies provided data sets which were sufficiently complete to be used as an accurate synopsis of activity in the fiscal years in question. This is mentioned because the amount of data which could be utilized in the analysis of the different issues varied.

## **6. SUMMARY OF DISCUSSIONS, APPLICABLE DATA, AND RECOMMENDATIONS FOR EACH ISSUE**

### **PREFERENCES**

#### **Apprenticeship Program Preference**

Section 103-55.6 of the Hawaii Revised Statutes (HRS), also known as “Act 17”, offers a bid preference for public works contracts having an estimated value of not less than \$250,000 if the bidder is a party to an apprenticeship agreement registered with the department of labor and industrial relations for each apprenticeable trade the bidder will employ to construct the public works, and in conformance with chapter 372. The original intent of this legislation was to incentivize the use of apprenticeship programs duly certified by the State to ensure a skilled construction workforce. By a majority vote of ten (10) to repeal, one (1) to modify, and one (1) for no change, the Task Force recommends the repeal of Act 17 (Apprenticeship Program Preference).

#### **Impact of Act 17 on Usage of Apprenticeship Programs**

Task Force members were in general agreement that there is no evidence that the intent and purpose of the law has been effective at increasing the usage of apprenticeship programs. The Department of Labor and Industrial Relations (DLIR) did not notice a significant difference in the usage of the apprenticeship programs which correlated with the passage of Act 17. Usage appears to continue to follow the business cycles of the construction industry (i.e. many apprentices when the industry is busy; a reduction when the industry is slow).

Neighbor Island contractors have greater difficulty executing the required forms than contractors located on Oahu because authorizing agents for the apprenticeship programs are on Oahu.

#### **Impacts on the Procurement Process**

The application of Act 17 to construction projects has cost the six government agencies who provided data \$397,617 more in FY 2013 and \$341,945 in the first three quarters of FY 2014 (until March 2014) because it resulted in award to other than the apparent low bidder.

Although guidance on the application of the preference has been provided via Comptroller's Memoranda and during State Procurement Office (SPO) training sessions on construction procurement, the Task Force is aware of inconsistencies in the application of this preference between agencies which have caused confusion and concern on the part of contractors. The data collected shows that the apprenticeship program preference has been the subject of some protests which caused delays.

For government agencies, Act 17 has also increased the time, effort, and cost of administering construction contracts through the award process for two primary reasons. First, the Act has made the bid evaluation process more difficult (and therefore more time-consuming and labor-intensive) because it often requires agencies to determine whether a contractor is actually self-performing other work covered by the Act. This is difficult because it requires intimate knowledge of the capabilities of all trade work covered by the Act and is further complicated by the fact that some construction workers can be considered to be "multi-skilled." In addition, application of the Act has resulted in a number of protests which further increased the time and staff costs associated with processing the award of construction contracts. Delays in the award process have also delayed the construction start date.

### **Hawaii Products Preference**

Section 103D-1002 of the Hawaii Revised Statutes offers bidders a bid preference for the use of products on the Hawaii products list. This preference, originally established in the early 1990s, was intended to encourage use of Hawaii Products. However, by a majority vote of 10-2, the Task Force recommends repeal of the Hawaii Products Preference as it applies to construction because, based on the data and discussions, it is no longer required to encourage the use of local products and therefore does not justify the additional time and expense associated with its use.

### **Impact of Hawaii Products Preference on Usage of Hawaii Products in Construction**

The Hawaii Products Preference is no longer the main reason for the use of Hawaii Products in construction. Members of the construction community on the Task Force agreed that they would choose to use Hawaii products in construction whenever possible because they prefer to do so anyway due to the fact that Hawaii products are easily obtained, cost effective, and in good supply. Increased public awareness of the importance of "buying local" also contributes to the use of Hawaii Products in construction. A third factor in the use of local products in construction is that their usage results in credits toward Leadership in Energy and Environmental Design (LEED) certification.

### **Impacts on the Procurement Process**

The application of the Hawaii Products Preference to construction projects has cost the six government agencies who provided data \$185,500 more in FY 2013 and \$14,323 more in the first three quarters of FY 2014 (until March 2014) because it resulted in award to other than the apparent low bidder.

For government agencies, application of the preference adds staff time to the bid evaluation process thereby delaying award. It is often difficult for government entities to distinguish whether it is appropriate to apply the preference in some cases due to substantial differences in quantities and pricing of the products among contractors for the same project which may be attributable to variation in methods of work, price quotes, or other reasons. Additionally, because the quantity is claimed at time of bid, and an award is made based on the claim made at the time of bid, verification of the listed quantity during construction would be too late to change the contract award.

### **Recycled Products Preference**

Section 103D-1005 of the Hawaii Revised Statutes offers bidders a bid preference for the use of products containing recycled material. The original intent of this preference, as established in the early 1990s, was to incentivize the use of recycled products. However, by a majority vote of 10-2, the Task Force recommends repeal of the Recycled Products Preference as it applies to construction because it has not been used and other incentives exist for usage of such materials.

#### **Impact of the Recycled Products Preference on Usage of Recycled Products in Construction**

Data collected by the Task Force indicates that the six governmental agencies that provided data have rarely incorporated this preference in bid documents. Many uncertainties remain about its implementation. In addition, there are two factors which encourage the use of recycled products in construction: 1) a heightened awareness of the importance of using recycled products for environmental reasons and 2) usage of recycled products in construction counts toward Leadership in Energy and Environmental Design (LEED) certification for buildings.

#### **Negative Impacts on the Procurement Process**

There are currently no negative impacts on the procurement process due to the application of this preference since it is not being used. If this preference were required, it would necessitate the development of additional guidelines regarding its use and result in delays in project award and construction start dates.

### **Supplementary Information on Preferences**

The tally sheet of the votes taken with regard to each of the preferences listed above appears as Appendix A. Some Task Force members have provided “position papers” to further elaborate on the reasons behind their votes to provide the legislature with more information regarding their experiences, observations, and interests.

As previously mentioned, preferences were the first topic of discussion, so data collection on all preferences covered the time period from July 1, 2012 thru March 15, 2014. A summary of the data collected on preferences is attached in Appendix B along with the information provided by each participating agency. Data on preferences was supplied by the City and County’s Department of Budget and Fiscal Services and the Board of Water

Supply, the University of Hawaii, and the State of Hawaii's Departments of Education, Transportation, and Accounting and General Services.

## **PROTESTS**

Section 103D-703 of the Hawaii Revised Statutes provides protests as a mechanism for the resolution of disputes during the procurement process for construction. Government agencies voiced concerns that protests take a considerable amount of staff time to resolve and often involve knowledge that is extraneous to the procurement code such as contractor licensing requirements. Task Force members agree that protests sometimes result in delays in the procurement and award process which may adversely impact the construction phase. However, after considerable discussion and analysis of the data collected it was noted that the negative impact of the protest process was not as substantial as first thought and is not likely to outweigh its merits.

### **Approach/Data Collection**

Government agencies agreed to collect data on protests received during fiscal years 2013 and 2014. SPO's Form 43 was used as a starting basis to create a format for more comprehensive data collection which included details/reasons and milestone dates to cover the entire protest process in a manner which lent itself to analysis. The State Departments of Education, Transportation, and Accounting and General Services, and University of Hawaii submitted data sets which were complete enough to provide a representative synopsis of protest activity for their agency. The Board of Water Supply and HART indicated that they had no protests of construction projects to report for this period. Data received from the City and County of Honolulu, Budget and Fiscal Services Department was incomplete and could not be used in certain analysis. Appendix D contains sheets summarizing the protest data collected.

### **No Formal Protests but Awarded to Non-Low Bidder**

Participating agencies were unable to provide data regarding the number of projects that were not formally protested but were awarded to non-low bidders. While the participating agencies recognize that some awards avoid formal protest due to resolutions prior to award, agencies are not required to compile such information and such collection would be administratively challenging to include in this report.

The following are some reasons, but limited to, why the apparent low bidder may have been rejected and the awards were made to non-low bidders when there was no formal protest made on the project:

- Failure to list the required subcontractor(s);
- listing the incorrect scope of the subcontractor;
- listing unlicensed subcontractor(s);
- failure to submit signed offer form;
- failure to submit a bid bond or signed bid bond;
- incorrect bid bond amount;
- mathematical errors by the bidder;



- failure to submit hard copies of electronic bid submittals within the required time frame specified;
- failure to upload required information by bidder in electronic bidding;
- non-compliant with Hawaii Compliance Express; and
- Failure to meet minimum specification requirements.

In addition to rejection of the apparent low bidder, without a protest, bidders have withdrawn their offer.

Awards to the non-low bidder were also made to due to preferences. This information is captured in the report.

### **Results of the Data Collection Process**

The following are some highlights of the results of the analysis:

#### Number of Projects Protested

- In FY 2013 and FY 2014, 5.5% and 7.0% of construction projects awarded were protested respectively. 63.3% of the protests received in FY2013 and of the protests received in FY2014 occurred between bid opening and award.
- In FY 2013 and FY 2014, of the protested projects, 59.2% and 38.7% respectively, concerned the subcontractor listing and most of those were over issues of missing subcontractors.

#### Time Impacts

- The average duration of a protest in FY 2013 was 113 calendar days; in FY2014 it was 56 calendar days. It should be noted, however, that the data for 2013 was skewed by a single Department of Education case of unusual duration which took 1,345 calendar days. Without that single case, the average duration of a protest in FY 2013 would have been 74 calendar days.
- The average time between bid opening and award for protested projects was 207 calendar days in FY2013 and 175 calendar days in FY2014. It should be noted, however, that the data for 2013 was skewed by a single case of unusual duration which took 1,739 calendar days. With that single case, the average time between bid opening and award for protested projects would have been 140 calendar days.

#### Cost Impacts

- Protests in itself do not necessarily cause a change or increase costs of project award amounts. There are many times when the apparent low bidder is protesting the rejection of their bid and the protest is denied by the agency. Because the agency is making an award to the next responsive and responsible low bidder other than the apparent low bidder anyway, the protest by the apparent low bidder did not cause the agency to make an award to the next responsive and responsible bidder.

- Although protests in itself do not necessarily cause a change or increase of project award amounts, the data collected shows that for protested projects awarded, there was a change in the total amount of contract awards by \$3,113,326 or 0.34% in FY 2013 and \$39,781 or 0.01% in FY 2014.-(These figures are exclusive of all agency staff costs, and costs incurred by the Office of the Attorney General, the Department of Commerce and Consumer Affairs and the Courts.)

Protest Data Summary tables provide further information in Appendix D.

Supplementary data collected from the Department of Commerce and Consumer Affairs showed that the protest bond requirement has greatly reduced the number of protests which proceed to DCCA hearings. In FY 2012 (prior to the requirement for a protest bond, thirty-six (36) protests resulted in DCCA hearings. By contrast, in fiscal years 2013 and 2014 that number was reduced to only fifteen (15) and fourteen (14), respectively. In FY 2013, all fifteen (15) appeals to DCCA were withdrawn by the protestor or denied/dismissed by the Hearings Officer.

### **General Discussion Notes**

The “perception” (emphasis added) is that protests are a huge problem. However, Task Force members generally agree that this perception results from the combined facts that: 1) protests can take a long time to properly resolve; 2) protests tend to affect larger dollar value construction projects which are associated with a higher level of public awareness because there is more incentive for contractors who do not win large bids to protest given the larger potential payoff; 3) there are other reasons construction projects may not be awarded to the apparent low bidder such as withdrawals and bid rejections; and 4) protests do not always result in the award of a construction project to an entity other than the apparent low bidder.

Most protests occur between bid opening and award. This is why protests may result in delays in the award process. However, a protest submitted post-award can be more problematic since the paperwork to rescind an award, re-award, and re-contract all take additional time and effort.

Review of the data collected, indicate that there were differences in the way protests were viewed and handled between agencies. This led to a number of separate discussions amongst agencies so that they could understand the reasoning behind some of the differences and understand how to handle the receipt of and reporting of protests. This does not affect the outcome of the award. It only affects what is reported as a protest.

Since the subcontractor listing appeared to be the most common reason for protests, the Task Force decided to collect data to supplement its discussions about the merits and problems associated with the subcontractor listing. The subcontractor listing requirement will be discussed in greater detail later in this report.

The Task Force had lengthy discussions regarding the time it takes to resolve a protest. It was generally agreed that putting a time limit on the resolution of protests would not be practical or productive. Government agencies said that protests can be time consuming for two primary reasons: 1) additional time demands protests place on existing procurement staff that have other work load demands and deadlines and 2) protests are often based on issues which require a working expertise in subjects other than procurement (i.e. DCCA's contractor licensing laws, DLIR's trade classifications, etc.). Protests which are lodged during a lapsing fund year cannot be handled quickly due to the workload demand already being placed upon the procuring entity to process bids. Protests take time for agencies to address because time is required to understand the issues, collect relevant project-specific information from project managers, consultants, and legal counsel. The process is further complicated by the fact that most protests are about subcontractor listing issues and require an intimate knowledge of contract license laws and their interpretation.

The extensive discussions on the matter of protests, while not resulting in complete agreement on all issues, have resulted in the Task Force becoming more aware of contrasting viewpoints and gaining an increased understanding by all parties that the protest process, while imperfect, is a mechanism for settling disputes which arise during the procurement process for construction projects in an impartial manner.

## **THE SUBCONTRACTOR LISTING REQUIREMENT**

Section 103D-302(b) of the Hawaii Revised Statutes requires that all bids include the name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the contract and the nature and scope of the work to be performed by each. The subcontractor listing requirement was enacted in an effort to prevent post-bid occurrences of bid shopping by prime contractors who are awarded State and County construction projects. Bid shopping in this context is the practice of playing one subcontractor against another to get lower prices. This practice does not benefit the State since it occurs after bids have been opened. It is the understanding of the Task Force that federal procurement law does not offer similar solicitation/bid requirements, though it was noted that the issue remains a matter of discussion and although other States have subcontractor listing requirements, some may differ from Hawaii's. The American Bar Association's Model Procurement Code, which Hawaii's procurement code was modeled originally after, does not contain subcontractor listing although it was noted that the ABA Model Procurement Code does contain provisions that require proof of responsibility which in some cases may require a prime contractor to identify and verify that the subcontractors to be employed on a contract meet all regulatory requirements. While subcontractors assert that the requirement prevents bid shopping, it has had both positive and negative impacts on the procurement process. Differences in opinion regarding the overall cost-benefit analysis associated with this requirement have caused this to be an issue of considerable contention. On October 6, 2014, the Task Force initially voted 6-5 to "repeal" the subcontractor listing requirement.\* However, in a subsequent Task Force meeting on January 20, 2015, the State Procurement Office requested a change in their vote from "repeal" with a caveat to modify later, to "no change." Therefore, the Task Force votes now tally to 6-5 for "no change" to the

subcontracting listing law for construction procurement with one member abstaining. Further information is presented below in addition to the related position papers in the appendix.

\*Some members of the Task Force expressed concern that if they voted to modify/amend the procurement code, they would not know what they were voting for because alternatives to the subcontractor listing requirement had not been discussed. Prior to voting (in a prior meeting), Task Force members were informed, and agreed, that if the majority of members voted to modify, possible alternative modifications would be discussed and a fresh vote taken on the most generally accepted alternative.

### **Impact of the Subcontractor Listing on Bid Shopping**

Groups representing the interests of subcontractors, indicate their members tend to prefer bidding on State and City projects because of the protection against bid shopping that the procurement code affords them. It was stated that many subcontractors do not bid on federal projects because the federal bidding process does not require subcontractor listing and therefore does not prevent bid shopping.

### **Discussion of the Need for Protection Against Bid Shopping**

Subcontractors argue that they offer their best price to bidders (general contractors) in an effort to be selected and fear that without the subcontractor listing requirement, some bidders who are awarded contracts may attempt to pit them against each other in an effort to force them to further lower the price for subcontracted work they offered to perform.

In response, general contractors argue that subcontractors should simply not submit quotes to bidders who are known to regularly bid shop. Subcontractors contend that although they would like to refrain from dealing with such general contractors, they may often feel forced to do so due to economic considerations.

In response to the general contractors argument that subcontractors should simply not submit quotes to bidders who are known to regularly bid shop, other members of the Task Force noted that such a suggestion reduces competition and encourages rather than addresses the issue of bid shopping.

Other members also noted that there is no financial advantage (savings) to be gained by the government agencies from bid shopping, as any savings as a result of bid shopping are realized solely by the bidder after award has been made.

### **Data Collection**

The General Contractors Association of Hawaii (GCA) assisted the Task Force by reviewing public records and comparing the Notices of Award with the bid tabulation summaries for construction projects from the government agencies on the Task Force. For every instance where the project was not awarded to the apparent low bidder at the time of bid opening, agencies were requested to provide the reason(s) why the apparent low bidder was not awarded a contract. The State Departments of Education, Transportation, Accounting and General Services, the University of Hawaii, and City and County of Honolulu provided responses.

The Department of Accounting and General Services staff took all of the information from the GCA and further isolated those construction projects which were not awarded to the apparent low bidder due to issues involving the subcontractor listing.

### **Positive Impacts on the Procurement Process**

Although most government agencies make it the bidder's responsibility to ensure that the bidder and its proposed subcontractors are appropriately licensed to perform all components of work on a project, government agencies have found the subcontractor listing to be useful because it provides the opportunity to check the listed subcontractors prior to making an award and can allow agencies to verify whether subcontractors to be used on a project are on any debarment list and that they possess active and valid contractor licenses before the contract is awarded. Rejection letters issued by government agencies served to educate general contractors so that they do not repeat the error in a future bid. In regards to rejections due to listing of unlicensed subcontractors, it informs the bidders as to the importance of checking the licenses of their selected subcontractors before submitting a bid.

### **Negative Impacts on the Procurement Process**

The subcontractor listing requirement for construction bids has caused problems for both bidders and procurement personnel. General discussion indicates that: 1) evaluation of the subcontractor listing and the protests centered on the subcontractor listing have added time to the procurement process, 2) the contractor licensing laws are difficult to understand because of the number of licenses, the amount of overlap between the defined scopes of licenses, and the frequent need for interpretation by the Contractor's License Board to determine which license(s) are required to perform items of work called for in the construction plans and specifications; 3) the PVL licensing information online is sometimes outdated, and 4) it is a frequent source of protests as competing bidders will challenge the subcontractor listings in attempts to disqualify and displace lower priced bids. Agency evaluation of the subcontractor listing is further complicated by the fact that a contractor's means and methods of work (information which is neither available nor evident based on the subcontractor listing) can impact the evaluation. The Task Force members find that the evaluation process could be improved by increased assistance from the Contractor's License Board.

### **Possible Solutions or Improvements**

Bidders contend that errors in the subcontractor listings often occur because they are rushing to complete the listing immediately prior to bid opening due to some subcontractors and suppliers failing to submit their sub-bid until right up to the bid submittal deadline. There was discussion about whether delaying Submission of the subcontractor listing form until sometime after the rest of the bid proposal is submitted might assist in preventing inadvertent subcontractor listing errors by the bidder. Opposing arguments contend that bid shopping could occur in a matter of hours after bid opening and that such a change would eliminate the protection that the sub-listing requirement currently provides.

Other suggestions include requiring that a list of subs be submitted to the agency for review and verification of compliance prior to final bid submittal, similar to the two-step method of procurement which is found in the ABA Model Procurement Code as an additional option of procurement.

The possibility of identifying specific subcontractor listing requirements in the solicitation documents by the procuring agency was discussed. However, agencies indicate that they cannot accurately predetermine what subcontractors are required for each project, since such listings are affected by differences in approach and methods of work between bidders and are further complicated by overlap in the scopes of work between licenses. Agencies who had attempted to do so in the past, found this to be a source of protests.

The Task Force was not able to agree to any one method or come to a conclusion for any recommendations for improvement.

### **Impact of Subcontractor Listing to Construction Costs**

The subcontractor listing requirement has also resulted in increased construction costs when the apparent low bidder is displaced due to an error or omission in the subcontractor listing. This occurred for approximately 1% of construction projects awarded in each of fiscal years 2013 and 2014. For the four government agencies who submitted complete data, the listing requirement resulted in \$498,353 of increased construction costs for awards of construction contracts awarded in FY2013 totaling \$897,117,463 (or 0.06%) and \$1,775,321.12 of increased construction costs for construction contracts awarded in FY2014 totaling \$521,725,488 (or 0.34%). It should be noted that the impact on the cost of construction for an individual project can be substantial. For example, on a small project, the apparent Low Bidder "A" whose bid amount was \$150,000 was rejected due to a flaw in the listing of subcontractor(s). The final awarded amount to the 2<sup>nd</sup> Low Bidder "B" was \$235,000 which increased the bid amount by \$55,215 which is 36.8% more than the original price. Therefore, what the data shows is that impacts to construction costs are relatively small overall, but there could be significant costs impacts to individual projects.

### **Supplementary Information**

The tally sheet of the votes taken with regard to the subcontractor listing requirement appears as Appendix E. Data collected in reference to the added construction costs attributable to the subcontractor listing requirement is included in Appendix F. "Position-papers" provided by some task force members to further elaborate on the reasons behind their vote to provide the legislature with more information regarding their experiences, observations, and interests in the matter are included in Appendix G.

## **IDENTIFYING AND ADDRESSING BAD CONTRACTORS**

The Task Force recognizes the value of identifying and addressing 'bad contractors'. It also recognizes the importance of maintaining the objectivity and efficiency of the Competitive Sealed Bid procurement process (also known as the Invitation for Sealed Bid (IFB) procurement process) which is most commonly used to procure construction services. With the time and resources available and due to the lack of quantifiable data, the Task Force was limited to discussions on the issue that covered the following items:

- How to identify or define a bad contractor;
- assessing the magnitude of the problem;
- use of other available procurement methods;
- fact-based documentation of poor performance records;
- better contract administration by enforcement of contract terms, conditions and requirements already in construction contracts by procuring agencies;
- better use of and possible improvements to the debarment process; and
- introduction of past performance into construction procurements which included a briefing from the State Procurement Office on their efforts with House Concurrent Resolution 176 of the 27<sup>th</sup> Legislature, 2014.

In addition, a number Task Force members attended the October 30, 2014 Procurement Policy Board meeting which included past performance as an agenda item.

### **Identification of ‘Bad Contractors’**

There was a general discussion on how a ‘bad contractor’ could be fairly and objectively defined. Doing so using a statistic would be problematic. For example, counting the number of change orders issued for a project could be misleading because not all change orders are contractor-generated and contractors should not be penalized in a performance rating for government-generated change orders or change orders due to differing site conditions. Similarly, time extensions can be due to factors outside of a contractor’s control (i.e. added time to address differing site conditions, shipping strikes, excessive amounts of bad weather, etc.). While a few characteristics of ‘bad contractors’ can be clearly defined (i.e. violations of wage and hour laws, failure to pay subcontractors or employees, etc.), many descriptions of behaviors exhibited by a ‘bad contractor’ (i.e. not responsive to phone calls, poor work quality, failure to adhere to the schedule, frivolous change order requests, filing change orders due to contractor error, etc.) have a degree of subjectivity attached to them.

Since many of the characteristics of a ‘bad contractor’ are inherently subjective, establishing objective, uniformly applicable criteria to insert into the IFB process could potentially be problematic. The introduction of subjectivity into the IFB process may result in an increased potential for protests, make it more difficult for agencies to defend its actions/decisions, and could result in delays and/or increased construction costs

### **Use of Other Available Procurement Methods**

The procurement code already contains methods other than the IFB process which can be used to procure construction services. The Multi-Step Competitive Sealed Bid procurement method (HAR 3-122, Subchapter 6.5) allows procuring agencies to establish qualifications in the solicitation documents which must be met by all who are asked to submit bids for the work. The Competitive Sealed Proposal method (HAR -122, Subchapter) also commonly known as the Request for Proposal or RFP method already allows the procuring agency to consider past performance with a clear understanding of how that consideration will affect the rating of the proposal. It was suggested that a consolidated effort is required to educate all procurement agency personnel regarding the availability and use of these methods and their potential role in

the procurement of construction services. It is noted that the Request for Proposal method of procurement allows for subjectivity and may lead to arbitrary awards.

### **Fact-Based Documentation of Poor Performance**

It was suggested that agencies need to make a more concerted effort to document poor performance of contractors. This would provide government agencies with documentation which can be used to justify actions such as the payment delays, non-payment, imposition of liquidated damages, filing of complaints (with the DCCA's Contractors License Board, the Department of Labor and Industrial Relations, or the Occupational Safety and Health Administration) or debarment/suspension. If payments are delayed or withheld due to non-performance, bonding and insurance companies will increase the rates they charge to provide bonds to 'bad contractors', making it more difficult for them to get government work. It was also suggested that the filing of complaints with the DCCA's Contractors License Board might be more attractive for agencies if such complaints would be indicated and taken into consideration by the Contractor's License Board since the "Current, Valid & In Good Standing" status currently afforded to contractors does not give any indication of the number of complaints on record for that contractor.

### **Better Contract Administration by Enforcement of Contract Terms, Conditions and Requirements**

It was suggested that more stringent contract administration by enforcement of contract terms, conditions and requirements by government agencies is needed to correct instances of poor performance.

### **Improve the Debarment Process**

The debarment and suspension processes and the lists that result are routinely consulted by procurement personnel prior to the award of construction contracts. Theoretically, 'bad contractors' should be on such lists.

Improvements to the debarment process may be more effective in preventing 'bad contractors' from getting work on State and County contracts. It is possible that there are elements of the process which make it an unattractive mechanism for government agencies to use with respect to poorly performing contractors. Members of the Task Force indicate that some contractors who have multiple infractions with the Occupational Safety and Health Administration (OSHA) or the Department of Labor and Industrial Relations (DLIR) and are still not on the debarment list. In addition, the fact that the business entity, not the Responsible Managing Employee (RME), appears in the debarment listing, makes it easy for a bad contractor to re-establish itself under a new business name with a clean record and the same RME.

### **Past Performance**

To supplement its discussions on the topic of the identification and handling of 'bad contractors', the Task Force was briefed by the State Procurement Office (SPO) on their effort in addressing House Concurrent Resolution (HCR) 176 (Twenty-Seventh Legislature, 2014) which requests the consideration of past performance in the award of construction IFB (low bid) contracts to avoid poor-performing contractors.



House Concurrent Resolution 176, Twenty-Seventh Legislature, 2014

A SPO representative briefed the Task Force on October 27, 2014 on its efforts with HCR 176. A number of Task Force members and other government procurement personnel with experience in construction procurements attended the October 30, 2014 meeting of the Procurement Policy Board since the consideration of past performance in the award of construction contracts was on the agenda. The State Procurement Office proposed to require the evaluation of recent and relevant past performance that could include state, federal, or private contracts. A number of attendees expressed concerns about the impacts and advisability of the requirement to consider past performance in all procurement methods (including the IFB method) and the proposed mechanism for doing so. The following concerns were raised about the consideration of past performance for the IFB (low bid) method of procurement:

- There is a need for uniformity in application (both in the types of data used to evaluate similar construction projects and in the determination of recency and relevancy);
- Data quality and manageability issues such as verification, consistency, duplication of efforts, and the additional staffing and information technology resources required to address them;
- The potential for an increased number of protests, delays, and cost impacts due to the inherent subjectivity associated with the consideration of past performance;
- The need for a mechanism of appeal to allow contractors to challenge or submit supplemental information for consideration; and
- There is a general concern that State and County governments do not have the funding and staffing resources of properly administer the consideration of past performance in the IFB (low bid) method.

To further underscore the importance of the verification process and its potential impact on impartiality in the procurement process, it should be noted that several of the procurement personnel from the government entities have already received letters from special interest groups which present allegations of various infractions and instances of poor performance by particular contractor in attempts to get the procuring agency to reject the bidder. Because it would be unfair to contractors to use this information without taking the time required to determine its veracity, such information should not be taken into consideration in the award of the construction contracts.

# APPENDIX A

## PREFERENCES

### Tally Sheet of Votes Taken



**DECISION MAKING - VOTING**

**STATE PROCUREMENT CODE TASK FORCE**

(S.C.R. 92, S.D. 2, 2013 LEGISLATIVE SESSION)

KALANIMOKU BUILDING, ROOM 426

1151 PUNCHBOWL STREET

MONDAY - AUGUST 8, 2014

1:30 P.M.

Name	Organization	Affiliation	Present	Not Present	Recycled Products			Hawaii Products			Apprenticeship Preference		
					Repeal	Modify	No Change	Repeal	Modify	No Change	Repeal	Modify	No Change
<b>Kika G. Bukoski</b>	<b>Hawaii Building &amp; Constr. Trade Council (HBCTC)</b>	Constr. Industry	X		X			X			X		
<b>Peter Lee</b>	<b>Hawaii Construction Alliance</b>	Constr. Industry	X				X			X			X
						10	0	2	10	0	2	10	1 1

Note: Names in bold print are the designated Task Force Members. Non-bold names are designated alternates.

# APPENDIX B

## PREFERENCES

### Data

# CONSTRUCTION AWARDS AND PREFERENCES

## SUMMARY

Mar-14

<b>Fiscal Year 2013</b>	Total No. of Projects Awarded:	582
July 1, 2012 to June 30, 2013	Total Cost of Project Awarded:	\$923,571,088
	<b><u>Act 17 - Apprenticeship Preference</u></b>	
	No. of Projects where Act 17 Applied:	316
	No. of Awards with Apprenticeship Preference:	235
	No. of Projects that Changed in Bid Order Due to Preference:	15
	Additional/Increased Cost Due to Change in Bid Order:	\$397,617
	% Additional/Increase in Cost Due to Change in Bid Order:	0.04%
	<b><u>Hawaii Products Preference</u></b>	
	No. of Projects where Hawaii Products Preference Applied:	317
	No. of Awards with Hawaii Products Preference:	192
	No. of Projects that Changed in Bid Order Due to Preference:	3
	Additional/Increased Cost Due to Change in Bid Order:	\$185,500
	% Additional/Increase in Cost Due to Change in Bid Order:	0.02%
	<b><u>Recycled Products Preference</u></b>	
	No. of Projects where Recycled Products Preference Applied:	0
	No. of Awards with Recycled Products Preference:	0
	No. of Projects that Changed in Bid Order Due to Preference:	0
	Additional/Increased Cost Due to Change in Bid Order:	\$0
	% Additional/Increase in Cost Due to Change in Bid Order:	0.00%
<b>Fiscal Year 2014</b>	Total No. of Projects Awarded:	166
July 1, 2013 to Present	Total Cost of Project Awarded:	\$378,390,715
	<b><u>Act 17 - Apprenticeship Preference</u></b>	
	No. of Projects where Act 17 Applied:	90
	No. of Awards with Apprenticeship Preference:	73
	No. of Projects that Changed in Bid Order Due to Preference:	7
	Additional/Increased Cost Due to Change in Bid Order:	\$341,945
	% Additional/Increase in Cost Due to Change in Bid Order:	0.09%
	<b><u>Hawaii Products Preference</u></b>	
	No. of Projects where Hawaii Products Preference Applied:	95
	No. of Awards with Hawaii Products Preference:	52
	No. of Projects that Changed in Bid Order Due to Preference:	1
	Additional/Increased Cost Due to Change in Bid Order:	\$14,323
	% Additional/Increase in Cost Due to Change in Bid Order:	0.00%
	<b><u>Recycled Products Preference</u></b>	
	No. of Projects where Recycled Products Preference Applied:	2
	No. of Awards with Recycled Products Preference:	1
	No. of Projects that Changed in Bid Order Due to Preference:	0
	Additional/Increased Cost Due to Change in Bid Order:	\$0
	% Additional/Increase in Cost Due to Change in Bid Order:	0.00%

**CONSTRUCTION PROCUREMENT DATA**

Agency	FY2013 Award Info.		FY2014 Award Info. (to 3/15/14)	
	No.	Total Dollar Value	No.	Total Dollar Value
Dept of Accounting & General Services Public Works Division	59	\$ 52,139,984	29	\$ 13,712,892
Department of Education	187	\$ 150,921,083	50	\$ 23,869,668
Department of Transportation	165	\$ 326,544,265	36	\$ 115,208,020
University of Hawaii	47	\$ 69,709,380	24	\$ 30,195,200
Office of Hawaiian Affairs	0	\$ -	0	\$ -
City and County of Honolulu Dept. of Budget & Fiscal Services	108	\$ 297,734,096	22	\$ 192,553,461
City and County of Honolulu Board of Water Supply	16	\$ 26,522,280	5	\$ 2,851,474

# CONSTRUCTION AWARDS AND PREFERENCES

DEPARTMENT/DIVISION:	DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES/PUBLIC WORKS DIVISION	
CONTACT:	Jolie Yee	
PHONE NO.:	808-586-0512	
EMAIL:	jolie.a.yee@hawaii.gov	

<b>Fiscal Year 2013</b>	Total No. of Projects Awarded:	59
July 1, 2012 to June 30, 2013	Total Cost of Project Awarded:	\$52,139,984
	<b><u>Act 17 - Apprenticeship Preference</u></b>	
	No. of Projects where Act 17 Applied:	42
	No. of Awards with Apprenticeship Preference:	12
	No. of Projects that Changed in Bid Order Due to Preference:	2
	Additional/Increased Cost Due to Change in Bid Order:	\$14,224
	% Additional/Increase in Cost Due to Change in Bid Order:	0.03%
	<b><u>Hawaii Products Preference</u></b>	
	No. of Projects where Hawaii Products Preference Applied:	59
	No. of Awards with Hawaii Products Preference:	8
	No. of Projects that Changed in Bid Order Due to Preference:	0
	Additional/Increased Cost Due to Change in Bid Order:	\$0
	% Additional/Increase in Cost Due to Change in Bid Order:	0.00%
	<b><u>Recycled Products Preference</u></b>	
	No. of Projects where Recycled Products Preference Applied:	0
	No. of Awards with Recycled Products Preference:	0
	No. of Projects that Changed in Bid Order Due to Preference:	0
	Additional/Increased Cost Due to Change in Bid Order:	\$0
	% Additional/Increase in Cost Due to Change in Bid Order:	0.00%
<b>Fiscal Year 2014</b>	Total No. of Projects Awarded:	29
July 1, 2013 to Present	Total Cost of Project Awarded:	\$13,712,892
	<b><u>Act 17 - Apprenticeship Preference</u></b>	
	No. of Projects where Act 17 Applied:	22
	No. of Awards with Apprenticeship Preference:	16
	No. of Projects that Changed in Bid Order Due to Preference:	3
	Additional/Increased Cost Due to Change in Bid Order:	\$42,369
	% Additional/Increase in Cost Due to Change in Bid Order:	0.31%
	<b><u>Hawaii Products Preference</u></b>	
	No. of Projects where Hawaii Products Preference Applied:	29
	No. of Awards with Hawaii Products Preference:	3
	No. of Projects that Changed in Bid Order Due to Preference:	0
	Additional/Increased Cost Due to Change in Bid Order:	\$0
	% Additional/Increase in Cost Due to Change in Bid Order:	0.00%
	<b><u>Recycled Products Preference</u></b>	
	No. of Projects where Recycled Products Preference Applied:	2
	No. of Awards with Recycled Products Preference:	1
	No. of Projects that Changed in Bid Order Due to Preference:	0
	Additional/Increased Cost Due to Change in Bid Order:	\$0
	% Additional/Increase in Cost Due to Change in Bid Order:	0.00%



# CONSTRUCTION AWARDS AND PREFERENCES

DEPARTMENT/DIVISION: DEPARTMENT OF EDUCATION - OSFSS ASB  
CONTACT: Christian Butt  
PHONE NO.: (808)586-0427  
EMAIL: christian\_butt@notes.k12.hi.us

<b>Fiscal Year 2013</b> July 1, 2012 to June 30, 2013	Total No. of Projects Awarded:	187
	Total Cost of Project Awarded:	\$150,921,083
	<b><u>Act 17 - Apprenticeship Preference</u></b>	
	No. of Projects where Act 17 Applied:	99
	No. of Awards with Apprenticeship Preference:	99
	No. of Projects that Changed in Bid Order Due to Preference:	7
	Additional/Increased Cost Due to Change in Bid Order:	\$173,250
	% Additional/Increase in Cost Due to Change in Bid Order:	0.11%
	<b><u>Hawaii Products Preference</u></b>	
	No. of Projects where Hawaii Products Preference Applied:	106
	No. of Awards with Hawaii Products Preference:	106
	No. of Projects that Changed in Bid Order Due to Preference:	3
	Additional/Increased Cost Due to Change in Bid Order:	\$185,500
	% Additional/Increase in Cost Due to Change in Bid Order:	0.12%
	<b><u>Recycled Products Preference</u></b>	
	No. of Projects where Recycled Products Preference Applied:	0
	No. of Awards with Recycled Products Preference:	0
	No. of Projects that Changed in Bid Order Due to Preference:	0
	Additional/Increased Cost Due to Change in Bid Order:	\$0
	% Additional/Increase in Cost Due to Change in Bid Order:	0.00%
<b>Fiscal Year 2014</b> July 1, 2013 to Present	Total No. of Projects Awarded:	50
	Total Cost of Project Awarded:	\$23,869,668
	<b><u>Act 17 - Apprenticeship Preference</u></b>	
	No. of Projects where Act 17 Applied:	23
	No. of Awards with Apprenticeship Preference:	23
	No. of Projects that Changed in Bid Order Due to Preference:	2
	Additional/Increased Cost Due to Change in Bid Order:	\$33,257
	% Additional/Increase in Cost Due to Change in Bid Order:	0.14%
	<b><u>Hawaii Products Preference</u></b>	
	No. of Projects where Hawaii Products Preference Applied:	28
	No. of Awards with Hawaii Products Preference:	28
	No. of Projects that Changed in Bid Order Due to Preference:	1
	Additional/Increased Cost Due to Change in Bid Order:	\$14,323
	% Additional/Increase in Cost Due to Change in Bid Order:	0.06%
	<b><u>Recycled Products Preference</u></b>	
	No. of Projects where Recycled Products Preference Applied:	0
	No. of Awards with Recycled Products Preference:	0
	No. of Projects that Changed in Bid Order Due to Preference:	0
	Additional/Increased Cost Due to Change in Bid Order:	\$0
	% Additional/Increase in Cost Due to Change in Bid Order:	0.00%

# CONSTRUCTION AWARDS AND PREFERENCES

DEPARTMENT/DIVISION:

DEPARTMENT OF TRANSPORTATION

CONTACT:

Tammy Lee, Contracts Office Supervisor

PHONE NO.:

(808)587-1991

EMAIL:

[tammy.l.lee@hawaii.gov](mailto:tammy.l.lee@hawaii.gov)

## Fiscal Year 2013

July 1, 2012 to June 30, 2013

Total No. of Projects Awarded: 165  
Total Cost of Project Awarded: \$326,544,265

### Act 17 - Apprenticeship Preference

No. of Projects where Act 17 Applied: 40  
No. of Awards with Apprenticeship Preference: 35  
No. of Projects that Changed in Bid Order Due to Preference: 3  
Additional/Increased Cost Due to Change in Bid Order: \$74,708  
% Additional/Increase in Cost Due to Change in Bid Order: 0.02%

### Hawaii Products Preference

No. of Projects where Hawaii Products Preference Applied: 35  
No. of Awards with Hawaii Products Preference: 30  
No. of Projects that Changed in Bid Order Due to Preference: 0  
Additional/Increased Cost Due to Change in Bid Order: \$0  
% Additional/Increase in Cost Due to Change in Bid Order: 0.00%

### Recycled Products Preference

No. of Projects where Recycled Products Preference Applied: 0  
No. of Awards with Recycled Products Preference: 0  
No. of Projects that Changed in Bid Order Due to Preference: 0  
Additional/Increased Cost Due to Change in Bid Order: \$0  
% Additional/Increase in Cost Due to Change in Bid Order: 0.00%

## Fiscal Year 2014

July 1, 2013 to Present

Total No. of Projects Awarded: 36  
Total Cost of Project Awarded: \$115,208,020

### Act 17 - Apprenticeship Preference

No. of Projects where Act 17 Applied: 10  
No. of Awards with Apprenticeship Preference: 8  
No. of Projects that Changed in Bid Order Due to Preference: 0  
Additional/Increased Cost Due to Change in Bid Order: \$0  
% Additional/Increase in Cost Due to Change in Bid Order: 0.00%

### Hawaii Products Preference

No. of Projects where Hawaii Products Preference Applied: 9  
No. of Awards with Hawaii Products Preference: 8  
No. of Projects that Changed in Bid Order Due to Preference: 0  
Additional/Increased Cost Due to Change in Bid Order: \$0  
% Additional/Increase in Cost Due to Change in Bid Order: 0.00%

### Recycled Products Preference

No. of Projects where Recycled Products Preference Applied: 0  
No. of Awards with Recycled Products Preference: 0  
No. of Projects that Changed in Bid Order Due to Preference: 0  
Additional/Increased Cost Due to Change in Bid Order: \$0  
% Additional/Increase in Cost Due to Change in Bid Order: 0.00%

# CONSTRUCTION AWARDS AND PREFERENCES

DEPARTMENT/DIVISION: UNIVERSITY OF HAWAII  
CONTACT: Duff Zwald  
PHONE NO.: (808)956-8687  
EMAIL: duff@hawaii.edu

**Fiscal Year 2013** Total No. of Projects Awarded: 47  
July 1, 2012 to June 30, 2013 Total Cost of Project Awarded: \$69,709,380

### Act 17 - Apprenticeship Preference

No. of Projects where Act 17 Applied: 31  
No. of Awards with Apprenticeship Preference: 24  
No. of Projects that Changed in Bid Order Due to Preference: 1  
Additional/Increased Cost Due to Change in Bid Order: \$14,652  
% Additional/Increase in Cost Due to Change in Bid Order: 0.02%

### Hawaii Products Preference

No. of Projects where Hawaii Products Preference Applied: 16  
No. of Awards with Hawaii Products Preference: 5  
No. of Projects that Changed in Bid Order Due to Preference: 0  
Additional/Increased Cost Due to Change in Bid Order: \$0  
% Additional/Increase in Cost Due to Change in Bid Order: 0.00%

### Recycled Products Preference

No. of Projects where Recycled Products Preference Applied: 0  
No. of Awards with Recycled Products Preference: 0  
No. of Projects that Changed in Bid Order Due to Preference: 0  
Additional/Increased Cost Due to Change in Bid Order: \$0  
% Additional/Increase in Cost Due to Change in Bid Order: 0.00%

**Fiscal Year 2014** Total No. of Projects Awarded: 24  
July 1, 2013 to Present Total Cost of Project Awarded: \$30,195,200

### Act 17 - Apprenticeship Preference

No. of Projects where Act 17 Applied: 14  
No. of Awards with Apprenticeship Preference: 13  
No. of Projects that Changed in Bid Order Due to Preference: 1  
Additional/Increased Cost Due to Change in Bid Order: \$266,100  
% Additional/Increase in Cost Due to Change in Bid Order: 0.88%

### Hawaii Products Preference

No. of Projects where Hawaii Products Preference Applied: 7  
No. of Awards with Hawaii Products Preference: 1  
No. of Projects that Changed in Bid Order Due to Preference: 0  
Additional/Increased Cost Due to Change in Bid Order: \$0  
% Additional/Increase in Cost Due to Change in Bid Order: 0.00%

### Recycled Products Preference

No. of Projects where Recycled Products Preference Applied: 0  
No. of Awards with Recycled Products Preference: 0  
No. of Projects that Changed in Bid Order Due to Preference: 0  
Additional/Increased Cost Due to Change in Bid Order: \$0  
% Additional/Increase in Cost Due to Change in Bid Order: 0.00%

# CONSTRUCTION AWARDS AND PREFERENCES

DEPARTMENT/DIVISION: BUDGET AND FISCAL-SERVICES, CITY AND COUNTY OF HONOLULU  
CONTACT: Michael Hiu  
PHONE NO.: (808)768-3940  
EMAIL: mhiu@honolulu.gov

<b>Fiscal Year 2013</b> July 1, 2012 to June 30, 2013	Total No. of Projects Awarded:	108
	Total Cost of Project Awarded:	\$297,734,096
	<b><u>Act 17 - Apprenticeship Preference</u></b>	
	No. of Projects where Act 17 Applied:	92
	No. of Awards with Apprenticeship Preference:	62
	No. of Projects that Changed in Bid Order Due to Preference:	2
	Additional/Increased Cost Due to Change in Bid Order:	\$120,783
	% Additional/Increase in Cost Due to Change in Bid Order:	0.04%
	<b><u>Hawaii Products Preference</u></b>	
	No. of Projects where Hawaii Products Preference Applied:	94
	No. of Awards with Hawaii Products Preference:	41
	No. of Projects that Changed in Bid Order Due to Preference:	0
	Additional/Increased Cost Due to Change in Bid Order:	\$0
	% Additional/Increase in Cost Due to Change in Bid Order:	0.00%
	<b><u>Recycled Products Preference</u></b>	
	No. of Projects where Recycled Products Preference Applied:	0
	No. of Awards with Recycled Products Preference:	0
	No. of Projects that Changed in Bid Order Due to Preference:	0
	Additional/Increased Cost Due to Change in Bid Order:	\$0
	% Additional/Increase in Cost Due to Change in Bid Order:	0.00%
<b>Fiscal Year 2014</b> July 1, 2013 to Present	Total No. of Projects Awarded:	22
	Total Cost of Project Awarded:	\$192,553,461
	<b><u>Act 17 - Apprenticeship Preference</u></b>	
	No. of Projects where Act 17 Applied:	18
	No. of Awards with Apprenticeship Preference:	12
	No. of Projects that Changed in Bid Order Due to Preference:	1
	Additional/Increased Cost Due to Change in Bid Order:	\$219
	% Additional/Increase in Cost Due to Change in Bid Order:	0.00%
	<b><u>Hawaii Products Preference</u></b>	
	No. of Projects where Hawaii Products Preference Applied:	19
	No. of Awards with Hawaii Products Preference:	10
	No. of Projects that Changed in Bid Order Due to Preference:	0
	Additional/Increased Cost Due to Change in Bid Order:	\$0
	% Additional/Increase in Cost Due to Change in Bid Order:	0.00%
	<b><u>Recycled Products Preference</u></b>	
	No. of Projects where Recycled Products Preference Applied:	0
	No. of Awards with Recycled Products Preference:	0
	No. of Projects that Changed in Bid Order Due to Preference:	0
	Additional/Increased Cost Due to Change in Bid Order:	\$0
	% Additional/Increase in Cost Due to Change in Bid Order:	0.00%

# CONSTRUCTION AWARDS AND PREFERENCES

DEPARTMENT/DIVISION: BOARD OF WATER SUPPLY  
CONTACT: Vicki Kitajima  
PHONE NO.: (808)748-5151  
EMAIL: vkitajima@hbws.org

**Fiscal Year 2013**  
July 1, 2012 to June 30, 2013

Total No. of Projects Awarded:	16
Total Cost of Project Awarded:	\$26,522,280

### Act 17 - Apprenticeship Preference

No. of Projects where Act 17 Applied:	12
No. of Awards with Apprenticeship Preference:	3
No. of Projects that Changed in Bid Order Due to Preference:	0
Additional/Increased Cost Due to Change in Bid Order:	\$0
% Additional/Increase in Cost Due to Change in Bid Order:	0.00%

### Hawaii Products Preference

No. of Projects where Hawaii Products Preference Applied:	7
No. of Awards with Hawaii Products Preference:	2
No. of Projects that Changed in Bid Order Due to Preference:	0
Additional/Increased Cost Due to Change in Bid Order:	\$0
% Additional/Increase in Cost Due to Change in Bid Order:	0.00%

### Recycled Products Preference

No. of Projects where Recycled Products Preference Applied:	0
No. of Awards with Recycled Products Preference:	0
No. of Projects that Changed in Bid Order Due to Preference:	0
Additional/Increased Cost Due to Change in Bid Order:	\$0
% Additional/Increase in Cost Due to Change in Bid Order:	0.00%

**Fiscal Year 2014**  
July 1, 2013 to Present

Total No. of Projects Awarded:	5
Total Cost of Project Awarded:	\$2,851,474

### Act 17 - Apprenticeship Preference

No. of Projects where Act 17 Applied:	3
No. of Awards with Apprenticeship Preference:	1
No. of Projects that Changed in Bid Order Due to Preference:	0
Additional/Increased Cost Due to Change in Bid Order:	\$0
% Additional/Increase in Cost Due to Change in Bid Order:	0.00%

### Hawaii Products Preference

No. of Projects where Hawaii Products Preference Applied:	3
No. of Awards with Hawaii Products Preference:	2
No. of Projects that Changed in Bid Order Due to Preference:	0
Additional/Increased Cost Due to Change in Bid Order:	\$0
% Additional/Increase in Cost Due to Change in Bid Order:	0.00%

### Recycled Products Preference

No. of Projects where Recycled Products Preference Applied:	0
No. of Awards with Recycled Products Preference:	0
No. of Projects that Changed in Bid Order Due to Preference:	0
Additional/Increased Cost Due to Change in Bid Order:	\$0
% Additional/Increase in Cost Due to Change in Bid Order:	0.00%

# APPENDIX C

## PREFERENCES

### Position Papers

Apprenticeship Program Preference

Hawaii Products Preference

Recycled Products Preference

**Position Papers**  
for the  
**Apprenticeship Program Preference**

**SUMMARY OF POSITION STATEMENTS SUBMITTED FOR APPRENTICESHIP PREFERENCE BY TASK FORCE MEMBERS**

Organization	Position Statement Submitted		Date of Statement
	Yes	No	
<b>TASK FORCE COMMITTEE MEMBERS:</b>			
Dept. of Accounting & General Services (DAGS)	X		10/6/2014
State Procurement Office (SPO)		X	
Dept. of Education (DOE)		X	
Dept. of Transportation (DOT)	X		10/6/2014
University of Hawaii (UH)	X		11/3/2014
Office of Hawaiian Affairs (OHA)		X	
Budget & Fiscal Services Dept. (C & C of Hon.)	X		10/2/2014
Board of Water Supply (BWS)	X		10/6/2014
Honolulu Authority for Rapid Transportation (HART)		X	
General Contractor's Association (GCA)	X		10/6/2014
Subcontractor's Association of Hawaii (SAH)		X	
Hawaii Construction Alliance	X		10/6/2014
Hawaii Building & Construction Trade Council	X		1/30/2015
<b>TASK FORCE NON-COMMITTEE MEMBERS:</b>			
Hawaii Operating Engineers Industry Stabilization Fund	X		10/20/2014
Building Industry Association of Hawaii (BIA)	X		11/4/2014
International Union of Painters and Allied Trades	X		undated



NEIL ABERCROMBIE  
GOVERNOR



DEAN H. SEKI  
COMPTROLLER  
MARIA E. ZIELINSKI  
DEPUTY COMPTROLLER

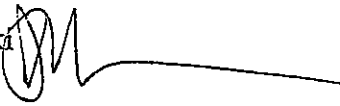
**STATE OF HAWAII**  
**DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES**

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

OCT 6 2014

PM-1049.4

TO: The Procurement Code Task Force

FROM: Dean H. Seki   
Comptroller

SUBJECT: Act 17—Apprenticeship Program Preference  
Position Statement

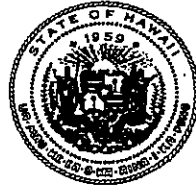
The Department of Accounting and General Services voted to repeal Hawaii Revised Statutes §103-55.6 (Act 17, Session Laws of Hawaii 2009)—Public Works Construction; Apprenticeship Agreement. The intent and purpose of Act 17 were to encourage and ensure the development of a well-trained workforce skilled in the various construction trades. Many of the individuals working in the trades gain their best knowledge of a particular trade through apprenticeship programs, and providing incentives for contractors to offer and maintain these programs will work toward developing the necessary skilled workforce. We offer the following comments and reasons for our vote to repeal this law:

1. There is no evidence that the intent and purpose of the law are being achieved. The complications this law has caused do not seem to be balanced by a significant increase in the number of skilled construction workers where it would justify keeping or modifying the law. Rather, the law has basically been used strictly as a means to gain a bid preference. The Department of Labor and Industrial Relations (DLIR) did not notice a significant difference in the usage of the apprenticeship programs which correlated with the passage of Act 17. They said that enrollment of apprentices has historically followed the business cycles of the construction industry (i.e., lots of apprentices when the construction industry is busy; a reduction in apprentices when the construction industry is slow).
2. There are differences or inconsistencies in its application on the part of the government agencies and trade sponsors. The apprenticeship program preference is not being applied in the same manner by all agencies, causing a degree of confusion among some contractors. For example, contrary to the Comptroller's Memorandum 2011-25, some agencies have told bidders that they only need to submit a single Certification Form 1 to qualify for the preference, when the Comptroller's Memorandum clearly states that an

offeror seeking the preference must be a party to an apprenticeship agreement registered with the DLIR at the time the offer is made for each apprenticable trade the offeror will employ to construct the project and that for each trade employed to perform the work, the offeror shall submit a Certification Form 1 verifying participation in an apprenticeship. DAGS has also become aware of the fact that some of the sponsors are either issuing pre-signed blank forms and/or not checking to see if the form has been properly completed prior to signing it.

3. Finally, the preference increases the amount of time taken to award and administer construction projects. Proper application of the preference often requires agencies to determine whether a contractor is actually self-performing other work covered by the Act. This is difficult for many procurement specialists to determine because it requires an intimate knowledge of both the subcontractor licenses and the capabilities of all trade work covered by the Act, and is further complicated by the fact that some construction workers can be considered to be "multi-skilled." The evaluation process can significantly add to the time between bid opening and award. The preference has been a source of protest for some agencies when it results in a change of awardee. Some agencies have also experienced difficulties ensuring that the extra form is completed and submitted during the construction process.

c: DLIR, Workforce Development Division



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

FORD N. FUCHIGAMI  
INTERIM DIRECTOR

Deputy Directors  
RANDY GRUNE  
AUDREY HIDANO  
ROSS M. HIGASHI  
JADINE URASAKI

IN REPLY REFER TO:  
CON  
5.0689

OCT 06 2014

Honorable Dean Seki  
State of Hawaii Comptroller  
Department of Accounting and General Services  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, HI 96813

Honorable Seki:

Subject: RE: State Procurement Task Force Decision Making, the Hawaii  
Department of Transportation Position on the Apprenticeship Preference

The Hawaii Department of Transportation (DOT) votes to repeal the five percent (5%) Apprenticeship Preference based on the actual impacts of implementing the preference. First, the cost increase to public works projects. During fiscal year 2013, an additional \$74,000 was added to DOT projects because of the application of the apprenticeship preference. Three (3) out of forty-three (43) projects where the preference was claimed by the second bidder, lowering its bid for evaluation purposes by five percent (5%) and awarded not to the bidder with the lowest bid, but to the second lowest bidder, resulting in a combined total increase of \$74,000. While three (3) projects may be an insignificant number, the volume of work involved in bid evaluation and the number of inquiries/protests regarding the validity of a bidders' Certification of Participation in an Approved Apprenticeship Program (Certification) results in project delays and valuable agency time and effort spent.

The second actual impact is delays in project construction. In fiscal year 2014, a \$12 million project that bid is delayed because of protests. The protested issues are the validity of bidder Certification, and whether the bidder that claimed the apprenticeship preference qualifies for the preference.

The third actual impact is the administrative burden and difficulties in enforcing the apprenticeship preference requirement. Bid evaluation to determine whether the bidder that claimed the apprenticeship preference qualifies for the preference can be challenging and subject to different interpretation among the procuring agencies.

And finally, the actual impact of following the letter of the law. Immaterial or typographical errors could render the Certification invalid and therefore the bidder would be denied the preference. The preference is applied to bidders that are party to an apprenticeship program but employing actual apprentices on the job is not a requirement. In theory, a contractor could be

Honorable Dean Seki

CON 5.0689

party to an apprenticeship program just to claim the preference with no ability or intention of hiring apprentices. For example, a neighbor island contractor could be a party to an apprenticeship program to gain the five percent (5%) preference, even when there are no apprentices available for employment on that particular island. In essence it is a 5% preference just for being a party to an apprenticeship program.

The intent of the law was to provide for a constant flow of a new highly skilled workforce. Rather than attaching this important goal in a procurement preference, could there be instead an incentive program tied to worker's compensation insurance? The Hawaii Department of Labor and Industrial Relations states on its website that a benefit to apprenticeship programs is fewer workers compensation claims.

Questions may be directed to Tammy Lee, DOT Contracts Office Supervisor, at (808) 587-2130.

Very truly yours,



FORD N. FUCHIGAMI  
Interim Director

C: Jadine Urasaki, Deputy Director of Projects  
Tammy Lee, Contracts Officer



UNIVERSITY  
of HAWAII  
SYSTEM

Vice President for Administration

November 3, 2014

The Honorable Dean H. Seki  
Comptroller  
State of Hawaii  
Department of Accounting and General Services  
P. O. Box 119  
Honolulu, Hawaii 96810-0119

Dear Mr. Seki:

Subject: Repeal of the Apprenticeship Agreement Preference for Construction Projects

The University of Hawaii supports the repeal of the apprenticeship agreement preference under Chapter 103-55.6, Hawaii Revised Statutes, for construction procurements.

The University recognizes the purpose of this preference to increase the enrollment of the various apprenticeship programs registered with the State of Hawaii Department of Labor and Industrial Relations in promoting the development of a well-trained construction workforce. However, the application of this preference to construction procurements has proved a major source of contention and protest as bidders seek to challenge the claims to the preference by bidders who have submitted lower-priced bids in an attempt to displace these bidders for the award of construction contracts. These disputes and protests involve a wide array of issues from technical flaws and errors in the documentation submitted by competing bidders in their applications for the preference to more complex challenges involving contractor licensing and the use of multi-skilled employees performing more than one apprenticeable trade. It is the University's position that there are other means for the State to promote these apprenticeship programs other than through a bid preference which has proved overly disruptive to construction procurements administered by governmental agencies.

Please feel free to contact me if you have any questions or require further information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jan Gouveia".

Jan Gouveia  
Vice President for Administration

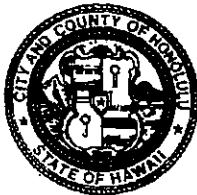
c: Duff Zwald, Director, Office of Procurement  
and Real Property Management

2444 Dole Street, Bachman Hall  
Honolulu, Hawaii 96822  
Telephone: (808) 956-6405  
Fax: (808) 956-9701

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DEPARTMENT OF BUDGET AND FISCAL SERVICES  
**CITY AND COUNTY OF HONOLULU**  
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PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: [www.honolulu.gov](http://www.honolulu.gov)

KIRK CALDWELL  
MAYOR



NELSON H. KOYANAGI, JR.  
DIRECTOR

GARY T. KUROKAWA  
DEPUTY DIRECTOR

October 2, 2014

Dean H. Seki  
State Procurement Code Taskforce  
Department of Accounting  
and General Services  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Dear Chair Seki,

SUBJECT: Repeal of the Apprenticeship Preference

The Department of Budget and Fiscal Services, City and County of Honolulu, **strongly supports** the repeal of Hawaii Revised Statutes Section 103-55.6, relating to the apprenticeship preference.

The apprenticeship preference and any bid preference promotes inefficiencies in the State's Procurement Code and when applied will prevent the City from awarding to the offeror who provides the best value. Bid preferences require additional time and resources for review and analysis. Bid preferences increase the chances of a protest or complaint. Bid preferences complicate and further delay the procurement process and increase the cost to the City.

Repealing the apprenticeship preference will allow the City to operate more effectively and efficiently.

Mahalo for the opportunity to provide written testimony to the taskforce. Should you have any questions or concerns, please feel free to contact [bfspurchasing@honolulu.gov](mailto:bfspurchasing@honolulu.gov).

Sincerely,

A handwritten signature in black ink that reads "Michael F. Hiu".

Michael F. Hiu  
Assistant Purchasing Administrator

# BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU  
630 SOUTH BERETANIA STREET  
HONOLULU, HI 96843



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Manager and Chief Engineer

ELLEN E. KITAMURA, P.E.  
Deputy Manager and Chief Engineer

October 6, 2014

Mr. Dean H. Seki, Comptroller  
State of Hawaii  
Department of Accounting and General Services  
P.O. Box 119  
Honolulu, Hawaii 96810-0119

Dear Mr. Seki:

Subject: Apprenticeship Program Preference

The Board of Water Supply ("BWS") voted to repeal Hawaii Revised Statutes §103-55.6 (Act 17, SLH 2009) because of the administrative difficulty in applying the law consistently. The Comptroller's Memorandum No. 2011-25 was issued to implement and administer the 5% bid preference and provides guidance to the various departments and agencies of the Department of Accounting and General Services.

The BWS has been using the Comptroller's Memorandum No. 2011-25 as no other administrative rules exist. The Comptroller's Memorandum No. 2011-25 clarifies that Contractors are entitled to the 5% bid preference if their employees are multi-skilled and able to perform work in more than one trade. Thus, the BWS is left to interpret whether or not the Contractor is missing a Form 1, Certification of Bidder's Participation in Approved Apprenticeship Program under Act 17, if a Sub-contractor will be employed to perform the work in question, or if the Contractor's employees are multi-skilled.

Act 17 prolongs the procurement process because the BWS needs to identify the apprenticeable trades that should be employed to perform the scope of work and determine which trades the Contractor versus the Sub-Contractor will be performing. The determination of responsiveness and responsibility is required to make an award. This determination is not clear even when the Form 1's are missing because multi-skilled employees can qualify the Contractor to obtain the preference.

It is the ambiguity and administrative difficulty that drives the decision to repeal Act 17, SLH 2009. If you have any questions, please contact Vicki Kitajima at 748-5071.

Very truly yours,



ERNEST Y. W. LAU, P.E.

Manager and Chief Engineer *JK*

1065 Ahua Street  
Honolulu, HI 96819  
Phone: 808-833-1681 FAX: 839-4167  
Email: [info@gcahawaii.org](mailto:info@gcahawaii.org)  
Website: [www.gcahawaii.org](http://www.gcahawaii.org)



**GCA of Hawaii**

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

October 6, 2014

**HAND-DELIVERED**

Honorable Dean Seki, Comptroller  
Chair, Procurement Task Force  
Comptroller, Department of Accounting and General Services  
State of Hawaii  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

**RE: Repeal of Act 17, SLH 2000, Apprenticeship Preference**

Dear Comptroller Seki,

Thank you for the opportunity to share the General Contractors Association of Hawaii's (GCA) reasons for its position to repeal Act 17, SLH 2000, commonly referred to as the apprenticeship preference, which allows contractors a five percent bid preference if they participate in a state recognized apprenticeship program. The 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.

The GCA is opposed to all procurement preferences in public works construction because it generally complicates the administration of the procurement process. Furthermore, such preferences ultimately cost the State of Hawaii and its taxpayers additional funds and often do not achieve the goals intended in passage of the initial legislation.

**Background Apprenticeship Programs in Hawaii**

In Hawaii, there are currently over 30 state recognized apprenticeship programs, both union and non-union that allow applicants to learn a trade through on-the-job experience and related classroom instruction. These apprenticeship programs continually recruit individuals that are interested in a particular trade and work with the employers for employee retention. Due to the recent economic downturn, some apprenticeship programs have been unable to direct apprentices to employment, thus increasing the availability of the workforce in certain trades. For more information on Hawaii's apprenticeship programs, visit <http://www2.honolulu.hawaii.edu/?q=node/331>



**Act 17, SLH, 2009 - Apprenticeship preference Adopted in Hawaii**

Act 17, SLH 2009 was enacted to spur creation of additional skilled construction workforce in Hawaii and provide well paid construction jobs for Hawaii's citizens. However, since the passage of Act 17, there are no statistics available to indicate that there have been any significant additional apprentices being trained, if the apprenticeship preference was not in place. GCA believes that the market place better dictates when and how many apprentices will enter the work place. Construction companies will not take on additional apprentices unless they feel they will have additional jobs or will need to replace members of their current work force. Additionally, potential apprentices will likely not seek positions as apprentices unless they believe that journeyman positions will be available at the end of their training, which is governed by the market conditions.

The statistics indicate that in FY2013, only fifteen bids changed in bid order due to the apprenticeship preference out of a total of three hundred sixteen. In 2014, seven bids changed position order due to application of the apprenticeship preference. The administration of the apprenticeship preference beyond the initial determination and its applicability to any bid to see how many apprentices were utilized and in what job categories is not available.

**GCA Opposes All Preferences, Including Act 17, SLH 2009**

The GCA believes that while well intended the current apprenticeship law pursuant to Act 17, SLH 2009, merely complicates and potentially causes further delay in the procurement process which is already complex with regard to administration and implementation of Act 17, SLH 2009 provisions. While GCA remains sensitive to the intent of the apprenticeship preference, its' intended improvements have not been met. GCA's position against all preferences as it relates to public works construction applies to Act 17, SLH 2009 and other preferences that may give unfair advantage to one contractor over another. For these reasons, GCA would prefer a repeal of Act 17, SLH 2009, rather than a modification to attempt to improve its administration.

Thank you for the opportunity to share our concerns and for considering our position.

With best regards,



Sherman Wong  
GCA Task Force Representative

# Hawai'i Construction Alliance

P.O. Box 179441  
Honolulu, HI 96817  
(808) 348-8885

October 6, 2014

Dean Seki, Comptroller  
Department of Accounting and General Services  
1151 Punchbowl Street  
Honolulu, Hawai'i 96813

RE: Apprenticeship Preference, Act 17 SLH 2009

Dear Mr. Seki,

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Laborers' International Union of North America, Local 368; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

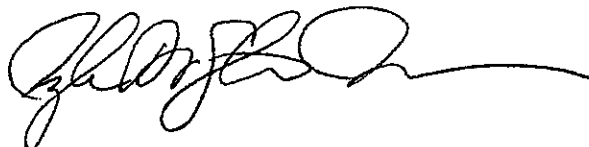
The Hawai'i Construction Alliance is one of the entities named to serve as a member of the task force established by SCR92 (2013) to study the state procurement code and identify amendments that would increase economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects.

At the September 8, 2014 meeting of the task force, members were asked to cast a vote to repeal, modify, or make no changes to the Apprenticeship Preference created by Act 17, SLH 2009. The Hawai'i Construction Alliance cast a vote to make no changes to the Apprenticeship Preference.

At this time, we do not believe that better economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects would be achieved by the repeal of the Apprenticeship Preference. Furthermore, at this time, we cannot identify nor propose any modifications to the state procurement code in regard to the Apprenticeship Preference that would better promote economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects.

We appreciate the opportunity to serve as a member of the task force. We look forward to continued discussions on how the State of Hawai'i and its counties can increase economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects.

Mahalo,



Tyler Dos Santos-Tam  
Executive Director  
Hawai'i Construction Alliance  
execdir@hawaiiiconstructionalliance.org



*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*

January 30, 2015

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Workers United Union of Roofers  
Local 221

State Procurement Code Task Force  
c/o Department of Accounting and General Services- Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Re: State Procurement Code Task Force Decision Making- Apprenticeship Preference

Aloha Task Force Members;

Pursuant to Senate Concurrent Resolution 92, Senate Draft 2 (2013), the State Procurement Code Task Force was charged to:

- 1) Identify and propose amendments, if any, to the state procurement code that may better promote economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects, including but not limited to a review of all bid preferences on public works projects;
- 2) Solicit input from the construction industry and determine whether administrative rules governing contractors reflect the intent of the Legislature and chapter 103D, Hawaii Revised Statutes; and
- 3) Submit its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2015.

The Task Force focused on four primary areas of discussion: 1) Bid Preferences, 2) Subcontractor Listing, 3) Bid Protests, and 4) Identifying and Addressing Bad Contractors.

The Hawaii Building and Construction Trades Council, AFL-CIO, as a member of the Task Force joined ten other voting members and voted to 'repeal' HRS 103-55.6 (ACT 17, 2009), Public Works Construction: Apprentice Agreement.

Of the thirteen member Task Force, there were 10 votes to "Repeal", 1 vote to "Amend" and 1 vote for "No Change" with 1 voting member "Absent". All State Administrative Procuring Agencies as well as the General Contractors Association as voting members of the Task Force voted in favor of repealing ACT 17 (2009). Additionally, The Building Industry Association, although not a member of the Task Force, offered written comments also supporting its repeal.

ACT 17 (2009), since its adoption, has been inconsistently interpreted and applied by the various procuring agencies. It has contributed to ongoing confusion and in some cases, protests, added cost to projects, project delays, and an unfair competitive advantages. Rules to implement the law have never been promulgated, but there have been numerous and conflicting advisory memoranda issued by the Comptroller's office that currently misinterprets and undermines its true intent and purpose.

Procuring agencies admittedly lack confidence in the consistent interpretation and/or application of the law. Some Neighbor Island Contractor Associations have expressed concern over the inconsistent application and potential competitive disadvantage when bidding against Oahu contractors. Additionally, apprenticeship programs have expressed ongoing concern that the law as currently interpreted, is not fulfilling its expressed intent of providing for the use of apprentices on public works projects that will promote the ongoing development of a local skilled workforce.

Absent specific amendments to HRS 103-55.6 and clear administrative rules that support and implement the true intent and purpose of the law, HBCTC as a voting member of the State Procurement Code Task Force supports the majority position of the Task Force to repeal ACT 17 (2009); Public Works Construction: Apprentice Agreement.

# BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

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BKA Builders, Inc.

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Gentry Homes, Ltd.

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BIA-Hawaii

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Ryan Engle  
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simplicityHR by ALTRES

November 4, 2014

Honorable Dean Seki, Comptroller  
Chair, Procurement Task Force  
Comptroller, Department of Accounting and General Services  
State of Hawaii  
c/o Mr. Eric K. Nishimoto  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

via email: [eric.k.nishimoto@hawaii.gov](mailto:eric.k.nishimoto@hawaii.gov)

## RE: REPEAL OF APPRENTICESHIP PREFERENCES

Dear Comptroller Seki,

My name is Gladys Marrone, CEO 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 supports the repeal of Hawaii Revised Statutes Section 103-55.6, relating to the apprenticeship preference.

HRS §103-55.6 creates additional costs for the agency through increased administration, delays, and higher winning bids. The additional hours and effort required by procurement officers to administer the preference represents serious inefficiencies and added costs. Delays caused by a longer process and higher chances of protest result in significant loss to both the agency and the contractor. Furthermore, preferences prevent the agency from awarding the bid which offers the best value.

While BIA-Hawaii appreciates the intent of the apprenticeship preference to encourage growth of the construction workforce, we believe the costs and unintended consequences outweigh the benefits. This is particularly true today as there is no shortage of apprentices.

We appreciate the opportunity to provide our comments in support of the repeal of the apprenticeship preference.

Sincerely,



Gladys Marrone, CEO  
BIA-Hawaii

**International Union of Painters and Allied Trades  
District Council 50**

**Position Statement By District Council 50**

The International Union of Painters and Allied Trades, District Council 50 ("DC50") thanks the State Procurement Task Force for this opportunity to present its position on the following two issues examined by the Task Force.

Apprenticeship Program Preference

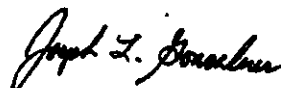
With respect to the apprenticeship preference (Hawaii Revised Statutes §103-55.6, also referred to by Task Force members as "Act 17"), DC50 believes that one of the greatest concerns raised in the discussion of the issue - that the law has been ineffective at increasing membership - reflects a problem with the wording of the law. Many of the agencies participating in the Task Force indicated that they apply the apprenticeship preference only to "bidders" due to the use of that term in the statute. Since a "bidder" on a public procurement contract is almost always a general contractor, the preference is being applied to general contractors not subcontractors. Yet there are far more subcontractors working on public construction projects than general contractors. DC50 believes that there would be a considerable increase in the membership of the apprenticeable trades if the law were applied to subcontractors as well as general contractors. Instead of repealing HRS §103-55.6, DC50 thus favors amending it to ensure that subcontractors may also receive the apprenticeship preference.

Identification of "Bad" Contractors/Past Performance

Generally, DC50 supports the amendment of the procurement code to require investigation and consideration of a General Contractor/Sub-Contractor's past performance as a part of that contractor's responsibility determination. This is particularly so with respect to General Contractor/Sub-Contractors who have been debarred and/or fined for safety and/or other violations in other states or on federal government contracts. Although such a requirement may result in increased work for the procurement agency, DC50 believes that this concern is outweighed by competing concerns over public safety and the public interest in ensuring that only responsible contractors are utilized on public construction projects.

Thank you for the opportunity to voice our position on these matters.

Sincerely,



Joseph Gonsalves  
Director of Organizing

**Position Papers**  
for the  
Hawaii Products Preference

**SUMMARY OF POSITION STATEMENTS SUBMITTED FOR HAWAII PRODUCT PREFERENCE BY TASK FORCE MEMEBERS**

Organization	Position Statement Submitted		Date of Statement
	Yes	No	
<b>TASK FORCE VOTING MEMBERS:</b>			
Dept. of Accounting & General Services (DAGS)	X		10/6/2014
State Procurement Office (SPO)		X	
Dept. of Education (DOE)		X	
Dept. of Transportation (DOT)	X		10/24/2014
University of Hawaii (UH)	X		11/3/2014
Office of Hawaiian Affairs (OHA)		X	
Budget & Fiscal Services Dept. (C & C of Hon.)	X		10/2/2014
Board of Water Supply (BWS)	X		10/6/2014
Honolulu Authority for Rapid Transportation (HART)		X	
General Contractor's Association (GCA)	X		10/6/2014
Subcontractor's Association of Hawaii (SAH)		X	
Hawaii Construction Alliance	X		10/6/2014
Hawaii Building & Construction Trade Council		X	
<b>TASK FORCE NON-VOTING MEMBERS:</b>			
Building Industry Association of Hawaii (BIA)	X		11/4/2014



NEIL ABERCROMBIE  
GOVERNOR



DEAN H. SEKI  
COMPTROLLER

MARIA E. ZIELINSKI  
DEPUTY COMPTROLLER

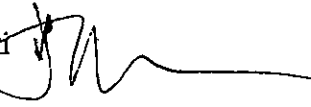
STATE OF HAWAII  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

OCT 6 2014

PM-1050.4

TO: The Procurement Code Task Force

FROM: Dean H. Seki   
Comptroller

SUBJECT: Hawaii Product Preference  
Position Statement

The Department of Accounting and General Services voted to repeal Hawaii Revised Statutes §103D-1002–Hawaii Products in part as it applies to construction materials and/or products because it appears that it is no longer needed. We offer the following comments and reasons for our vote to repeal this law:

1. It should be noted that the use of local products counts toward Leadership in Energy and Environmental Design (LEED) certification. Since new public buildings are encouraged to be LEED-certified, both design consultants and contractors are encouraged to use Hawaii Products as part of their efforts to achieve certification. This incentive to use Hawaii Products, as well as the increased general public awareness of the importance of “buying local,” did not exist at the time the law was originally enacted.
2. Hawaii Products may have once been more expensive or less competitive than their counterparts, thus requiring a preference to encourage their use, but contractors and subcontractors on the Task Force have indicated that they would already prefer to use many of the listed products and would choose them even in absence of the preference for a wide variety of reasons which range from cost effectiveness to convenience and practicality. This is supported by the fact that the increase in cost of construction projects due to application of the preference was negligible (0.00-0.02%).
3. Finally, there are some difficulties in obtaining and applying the preference. On the part of contractors, it requires filling out additional tables during the hectic preparation period for a bid. For the majority of DAGS jobs, few, if any, contractors have applied for the preference. On the part of government agencies, it is difficult to distinguish whether it is appropriate to apply the preference in some cases due to substantial differences in quantities and pricing of the products among contractors for the same project. Agencies are often not able to verify that the information is correct (and not inflated) because both pricing and methods of work (which can result in a wide variation in product quantities) may vary considerably among contractors.

NEIL ABERCROMBIE  
GOVERNOR



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

FORD N. FUCHIGAMI  
INTERIM DIRECTOR

Deputy Directors  
RANDY GRUNE  
AUDREY HIDANO  
ROSS M. HIGASHI  
JADINE URASAKI

IN REPLY REFER TO:  
CON  
5.0690

October 24, 2014

Mr. Dean H. Seki  
State of Hawaii Comptroller  
Department of Accounting and General Services  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, HI 96813

Dear Comptroller:

Subject: RE: State Procurement Task Force Decision Making, the Hawaii  
Department of Transportation Position on the Hawaii Products Preference

As a follow up action item regarding all members to provide their rationale to their vote and position on the Hawaii Products Preference, the Hawaii Department of Transportation (DOT) vote to repeal the ten percent (10%) preference for the use of Hawaii Products in construction bids is provided. While the DOT appreciates the objective of the preference, to promote the use of Hawaii Products, there have been both project delay and cost impacts.

Of the two impacts noted above, the more significant issue is on the project delay. The project delays were caused by protests based on the proper application of the Hawaii Product Preference. It is difficult to determine whether a contractor claiming the preference is entitled to the preference in some instances because of the differences in quantities and the pricing of the products among contractors on the same project.

Questions may be directed to Tammy Lee, DOT Contracts Office Supervisor, at (808) 587-2130.

Very truly yours,

  
FORD N. FUCHIGAMI  
Interim Director

c: Jadine Urasaki, Deputy Director of Projects  
Tammy Lee, Contracts Officer



UNIVERSITY  
of HAWAII<sup>®</sup>  
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Vice President for Administration

November 3, 2014

The Honorable Dean H. Seki  
Comptroller  
State of Hawaii  
Department of Accounting and General Services  
P. O. Box 119  
Honolulu, Hawaii 96810-0119

Dear Mr. Seki:

Subject: Repeal of the Hawaii Products Preference for Construction Projects

The University supports the repeal of the Hawaii products preference under Chapter 103D-1002, Hawaii Revised Statutes, and Chapter 3-124, Hawaii Administrative Rules, for construction procurements.

The University currently applies the Hawaii products preference to its construction procurements where applicable. For these procurements, University must rely on a bidder's representation of the amount of the particular Hawaii product that it would be utilizing for the construction. Depending on the class designation of the Hawaii product, the University is then required to decrease the amount of the bidder's bid by a specific percentage applied to the represented dollar amount of the particular Hawaii product to be used by the bidder.

In practice, the amount of Hawaii products to be used by bidders is entirely subjective. One bidder may represent that it will use more of a Hawaii product than another bidder. Therefore, that bidder would be afforded a higher preference amount to be deducted from its bid price. As such, there is no consistency in applying the preference across-the-board to all bidders utilizing Hawaii products. Moreover, the Hawaii products most often used for construction projects, cement and asphalt, are generally used by all bidders anyway based on cost considerations. Therefore, there is no indication that the Hawaii products preference promotes the use of Hawaii products in construction projects any more so than these inherent economic considerations.

Lastly, because the Hawaii products preference is only applied to the portion of the bid that represents the cost of the Hawaii product and not the total bid amount, the adjustment to the total bid is generally negligible. As a result, the University has very rarely displaced any bidder based on the application of the Hawaii product preference when awarding any construction contracts.

Please feel free to contact me if you have any questions or require further information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jan Gouveia".

Jan Gouveia  
Vice President for Administration

c: Duff Zwald, Director, Office of Procurement  
and Real Property Management

2444 Dole Street, Bachman Hall  
Honolulu, Hawaii 96822  
Telephone: (808) 956-6405  
Fax: (808) 956-9701

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

IN REPLY REFER TO:  
CON  
5.0709

NOV 06 2014

Mr. Dean Seki  
State of Hawaii Comptroller  
Department of Accounting and General Services  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, HI 96813

Dear Comptroller:

Subject: RE: State Procurement Task Force Decision Making, the Hawaii Department of Transportation Position on the Recycled Products Preferences

The Hawaii Department of Transportation (DOT) supports the repeal of HRS 103D-1005 relating to the procurement of recycled products.

Although the original intent of this bid preference may have been to encourage sustainability in the use of recycled products, based on the recent data collected, it is currently rarely used or not used at all. Bid preferences increases the use of staff resources and sometimes increased cost and delays of constructing the project to the DOT and public tax payer.

Questions may be directed to Tammy Lee, DOT Contracts Office Supervisor, at (808) 587-2130.

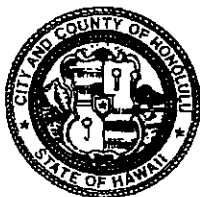
Very truly yours,

A handwritten signature in black ink, appearing to read "Ross M. Higashi".

ROSS M. HIGASHI  
Interim Director

C: Jadine Urasaki, Deputy Director of Projects  
Tammy Lee, Contracts Officer

DEPARTMENT OF BUDGET AND FISCAL SERVICES  
**CITY AND COUNTY OF HONOLULU**  
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813  
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: [www.honolulu.gov](http://www.honolulu.gov)



KIRK CALDWELL  
MAYOR

NELSON H. KOYANAGI, JR.  
DIRECTOR

GARY T. KUROKAWA  
DEPUTY DIRECTOR

October 2, 2014

Dean H. Seki  
State Procurement Code Taskforce  
Department of Accounting  
and General Services  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Dear Chair Seki,

**SUBJECT: Repeal of the Hawaii Products Preference**

The Department of Budget and Fiscal Services, City and County of Honolulu, **strongly supports** the repeal of Hawaii Revised Statutes Section 103D-1002, relating to the procurement of Hawaii products.

The Hawaii products preference and any bid preference promotes inefficiencies in the State's Procurement Code and when applied will prevent the City from awarding to the offeror who provides the best value. Bid preferences require additional time and resources for review and analysis. Bid preferences increase the chances of a protest or complaint. Bid preferences complicate and further delay the procurement process and increase the cost to the City.

Repealing the Hawaii products preference will allow the City to operate more effectively and efficiently.

Mahalo for the opportunity to provide written testimony to the taskforce. Should you have any questions or concerns, please feel free to contact [bfspurchasing@honolulu.gov](mailto:bfspurchasing@honolulu.gov).

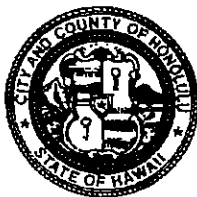
Sincerely,

A handwritten signature in cursive script that reads "Michael F. Hiu".

Michael F. Hiu  
Assistant Purchasing Administrator

DEPARTMENT OF BUDGET AND FISCAL SERVICES  
**CITY AND COUNTY OF HONOLULU**  
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813  
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: [www.honolulu.gov](http://www.honolulu.gov)

KIRK CALDWELL  
MAYOR



NELSON H. KOYANAGI, JR.  
DIRECTOR

GARY T. KUROKAWA  
DEPUTY DIRECTOR

October 2, 2014

Dean H. Seki  
State Procurement Code Taskforce  
Department of Accounting  
and General Services  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Dear Chair Seki,

**SUBJECT: Repeal of the Hawaii Products Preference**

The Department of Budget and Fiscal Services, City and County of Honolulu, **strongly supports** the repeal of Hawaii Revised Statutes Section 103D-1002, relating to the procurement of Hawaii products.

The Hawaii products preference and any bid preference promotes inefficiencies in the State's Procurement Code and when applied will prevent the City from awarding to the offeror who provides the best value. Bid preferences require additional time and resources for review and analysis. Bid preferences increase the chances of a protest or complaint. Bid preferences complicate and further delay the procurement process and increase the cost to the City.

Repealing the Hawaii products preference will allow the City to operate more effectively and efficiently.

Mahalo for the opportunity to provide written testimony to the taskforce. Should you have any questions or concerns, please feel free to contact [bfspurchasing@honolulu.gov](mailto:bfspurchasing@honolulu.gov).

Sincerely,

A handwritten signature in cursive script, reading "Michael F. Hiu".

Michael F. Hiu  
Assistant Purchasing Administrator

# BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU  
630 SOUTH BERETANIA STREET  
HONOLULU, HI 96843



October 6, 2014

KIRK CALDWELL, MAYOR

DUANE R. MIYASHIRO, Chair  
ADAM C. WONG, Vice Chair  
MAHEALANI CYPHER  
THERESIA C. McMURDO  
DAVID C. HULIHEE

ROSS S. SASAMURA, Ex-Officio  
FORD N. FUCHIGAMI, Ex-Officio

ERNEST Y. W. LAU, P.E.  
Manager and Chief Engineer

ELLEN E. KITAMURA, P.E.  
Deputy Manager and Chief Engineer

Mr. Dean H. Seki, Comptroller  
State of Hawaii  
Department of Accounting and General Services  
P.O. Box 119  
Honolulu, Hawaii 96810-0119

Dear Mr. Seki:

Subject: Hawaii Products Preference

The Board of Water Supply ("BWS") voted to repeal Hawaii Revised Statutes §103D-1002 Hawaii Products as it applies to construction solicitations issued pursuant to §103D-302 because the Contractors are obtaining Hawaii products from the same sources of supply but their dollar amounts are different.

Bid solicitations require that the offeror list the Hawaii products and its price f.o.b. jobsite, unloaded, including applicable general excise tax and use tax. For bid evaluation purposes, the offer for the Hawaii product is decreased by its applicable ten percent or fifteen percent classification preference. The concern is that this dollar amount differs by Contractor based on their estimated quantities to be used and the variance can be substantial. The difference is difficult to verify as Contractors may be using different construction methods and means.

If you have any questions, please contact Vicki Kitajima at 748-5071.

Very truly yours,

ERNEST Y.W. LAU, P.E.  
Manager and Chief Engineer *UK*

1065 Ahua Street  
Honolulu, HI 96819  
Phone: 808-833-1681 FAX: 839-4167  
Email: [info@gcahawaii.org](mailto:info@gcahawaii.org)  
Website: [www.gcahawaii.org](http://www.gcahawaii.org)



# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

October 6, 2014

**HAND-DELIVERED**

Honorable Dean Seki, Comptroller  
Chair, Procurement Task Force  
Comptroller, Department of Accounting and General Services  
State of Hawaii  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

**RE: Repeal of Hawaii Products Preference**

Dear Comptroller Seki,

Thank you for the opportunity to share the General Contractors Association of Hawaii's position to repeal the Hawaii Products Preference. The 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.

The GCA is opposed to all procurement preferences in public works construction because it generally complicates the administration of the procurement process. Furthermore, such preferences ultimately cost the State of Hawaii and its taxpayers additional funds and often do not achieve the goals intended in passage of the initial legislation.

**Background of Hawaii Product Preference**

GCA supports the repeal of the Hawaii Products Preference in construction only as it applies pursuant to Chapter 103D, Hawaii Revised Statutes (HRS). GCA has no opinion on the Hawaii Products Preference as it relates to items outside of construction. Pursuant to Hawaii Revised Statutes, Section 103D-1002, the Hawaii Products Preference allows the price or bid offered using the Hawaii Products Preference to be decreased by subtracting ten per cent for Class I Hawaii product items or fifteen per cent for Class II Hawaii product items. Upon review of the use of the Hawaii Products Preference for public works construction projects in the past two fiscal years, it changed the order of bids for three projects in 2013 and one project in 2014 according to statistics collected by the Task Force. The GCA believes that almost all Hawaii based companies bidding for state projects will attempt to utilize Hawaii products if they are easily obtained and readily available.



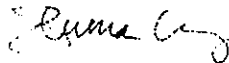
"Hawaii products" is defined as a product mined, excavated, produced, manufactured, raised or grown in the State and where the cost of the Hawaii input towards the product exceeds fifty per cent to fhte total cost of the product; provided that (1) Where the value of the input exceeds fifty per cent of the total cost, the product shall be classified as Class I; and (2) Where any agricultural, aquacultural, horticultural, silvicultural, floricultural, or livestock products is raised, grown, or harvested in the State, the product shall be classified as Class II. See HRS, Section 103D-1001.

**GCA's Position in Support of Repeal of Hawaii Products Preference**

Upon review of the past two fiscal year statistics as it relates to the use of Hawaii Products Preference, while the statistics indicate very little additional costs were incurred by the state due to changes in the bid order, the State still incurred additional cost by providing a discounted bid price to firms claiming the Hawaii Products Preference. The Hawaii Products Preference intent was to increase the use of locally cultivated products, however in construction the use of such products are of primary choice due to availability and resources. While the intent was well intended there is no administrative monitoring during construction regarding the proposed use of Hawaii products and its quantities, nor is there any administrative follow up at the close of the project on how much Hawaii products were actually used to complete the project. For these reasons, we believe the Hawaii Products Preference, similar to other preferences are not necessary and further complicate the procurement process.

Thank you for the opportunity to share our concerns and for considering our position.

With best regards,



Sherman Wong  
GCA Task Force Representative

# Hawai'i Construction Alliance

P.O. Box 179441  
Honolulu, HI 96817  
(808) 348-8885

October 6, 2014

Dean Seki, Comptroller  
Department of Accounting and General Services  
1151 Punchbowl Street  
Honolulu, Hawai'i 96813

RE: Hawai'i Products Preference

Dear Mr. Seki,

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Laborers' International Union of North America, Local 368; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

The Hawai'i Construction Alliance is one of the entities named to serve as a member of the task force established by SCR92 (2013) 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.

At the September 8, 2014 meeting of the task force, members were asked to cast a vote to repeal, modify, or make no changes to the Hawai'i Products Preference. The Hawai'i Construction Alliance cast a vote to make no changes to the Hawai'i Products Preference. We believe that the existing preference supports the vendors and producers of Hawai'i products and helps to create and sustain quality local jobs.

We appreciate the opportunity to serve as a member of the task force. We look forward to continued discussions on how the State of Hawai'i and its counties can increase economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects.

Mahalo,



Tyler Dos Santos-Tam  
Executive Director  
Hawai'i Construction Alliance  
execdir@hawaiiconstructionalliance.org

# **BIA-HAWAII**

**BUILDING INDUSTRY ASSOCIATION**

THE VOICE OF THE CONSTRUCTION INDUSTRY

## 2014 Officers

### President

Brian K. Adachi  
BKA Builders, Inc.

### President-Elect

Richard Hobson, Jr.  
Gentry Homes, Ltd.

### Vice President

Craig Washofsky  
Servco Home & Appliance Distribution

### Treasurer

Guy J. Shindo  
First Hawaiian Bank

### Secretary

Evan Fujimoto  
Graham Builders, Inc.

### Special Appointee-Builder

Paul D. Silen  
Hawaiian Dredging Construction Co., Inc.

### Special Appointee-Builder

Mark Kennedy  
HASEKO Construction Management  
Group, Inc.

### Special Appointee-Associate

Dean Uchida  
SSFM International, Inc.

### Immediate Past President

Greg Thielen  
Complete Construction Services Corp.

### Chief Executive Officer

Gladys Marrone  
BIA-Hawaii

## 2014 Directors

Anthony Borge  
RMA Sales

Carleton Ching  
Castle & Cooke Hawaii, Inc.

Chris Cheung  
CC Engineering & Construction, Inc.

Clifton Crawford  
C&J Contracting, Inc.

Eric Bass  
D.R. Horton, Schuler Division

Gary T. Okimoto  
Honolulu Wood Treating

Lili Shintani  
Alan Shintani, Inc.

Mark Hertel  
Inter-Island Solar Supply, Oahu-Maui-  
Hawaii-Kauai

Marshall Hickox  
Homeworks Construction, Inc.

Michael Watanabe  
JW, Inc.

Ryan Engle  
Bays Lung Rose & Holma

Stephen Hanson  
simplicityHR by ALTRES

November 4, 2014

Honorable Dean Seki, Comptroller  
Chair, Procurement Task Force  
Comptroller, Department of Accounting and General Services  
State of Hawaii  
c/o Mr. Eric K. Nishimoto  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

via email: [eric.k.nishimoto@hawaii.gov](mailto:eric.k.nishimoto@hawaii.gov)

## RE: REPEAL OF HAWAII PRODUCTS PREFERENCES

Dear Comptroller Seki,

My name is Gladys Marrone, CEO 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 supports the repeal of Hawaii Revised Statutes Section 103D-1002, relating to the Hawaii products preference.

HRS §103D-1002 creates additional costs for the agency through increased administration, delays, and higher winning bids. The additional hours and effort required by procurement officers to administer the preference represents serious inefficiencies and added costs. Delays caused by a longer process and higher chances of protest result in significant loss to both the agency and the contractor. Furthermore, preferences prevent the agency from awarding the bid which offers the best value.

While BIA-Hawaii appreciates the intent of the Hawaii products preference to stimulate the local economy, we believe the costs and unintended consequences outweigh the benefits.

We appreciate the opportunity to provide our comments in support of the repeal of the Hawaii products preference.

Sincerely,



Gladys Marrone, CEO  
BIA-Hawaii

Position Papers  
for the  
Recycled Products Preference

**SUMMARY OF POSITION STATEMENTS SUBMITTED FOR RECYCLED PRODUCT PREFERENCE BY TASK FORCE MEMBERS**

Organization	Position Statement Submitted		Date of Statement
	Yes	No	
<b>TASK FORCE COMMITTEE MEMBERS:</b>			
Dept. of Accounting & General Services (DAGS)	X		10/6/2014
State Procurement Office (SPO)		X	
Dept. of Education (DOE)		X	
Dept. of Transportation (DOT)	X		11/6/2014
University of Hawaii (UH)	X		11/3/2014
Office of Hawaiian Affairs (OHA)		X	
Budget & Fiscal Services Dept. (C & C of Hon.)	X		10/2/2014
Board of Water Supply (BWS)	X		10/6/2014
Honolulu Authority for Rapid Transportation (HART)		X	
General Contractor's Association (GCA)	X		10/6/2014
Subcontractor's Association of Hawaii (SAH)		X	
Hawaii Construction Alliance	X		10/6/2014
Hawaii Building & Construction Trade Council		X	
<b>TASK FORCE NON-COMMITTEE MEMBERS:</b>			
Building Industry Association of Hawaii (BIA)	X		11/4/2014

NEIL ABERCROMBIE  
GOVERNOR



DEAN H. SEKI  
COMPTROLLER  
MARIA E. ZIELINSKI  
DEPUTY COMPTROLLER

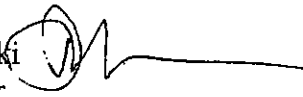
**STATE OF HAWAII**  
**DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES**

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

OCT 6 2014

PM-1051.4

TO: The Procurement Code Task Force

FROM: Dean H. Seki   
Comptroller

SUBJECT: Recycled Product Preference  
Position Statement

The Department of Accounting and General Services voted to repeal Hawaii Revised Statutes §103D-1005—Recycled Products in part as it applies to construction materials and/or products because it appears that it is no longer needed. We offer the following comments and reasons for our vote to repeal this law:

1. At the time the law regarding recycled products was written, there may have been a need to encourage the use of recycled products. It should be noted that the use of recycled products counts toward Leadership in Energy and Environmental Design (LEED) certification. Since new public buildings are encouraged to be LEED-certified, both design consultants and contractors are encouraged to use recycled products as part of their efforts to achieve certification.
2. The data shows that the use of the Recycled Products was rarely used or not used at all.



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Vice President for Administration

November 3, 2014

The Honorable Dean H. Seki  
Comptroller  
State of Hawaii  
Department of Accounting and General Services  
P. O. Box 119  
Honolulu, Hawaii 96810-0119

Dear Mr. Seki:

Subject: Repeal of the Recycled Products Preference for Construction Projects

The University of Hawaii supports the repeal of the recycled products preference under Chapter 103D-1005, Hawaii Revised Statutes, and Chapter 3-124, Hawaii Administrative Rules, for construction procurements.

For major renovation projects of existing buildings and for the construction of new buildings, the University has increasingly moved toward renovation and construction calling for LEED or green building certification. The incorporation of such LEED/green building certification requirements in the technical specifications for construction projects achieves a similar purpose as the utilization of the recycled products preference and more effectively promotes the use of building materials with recycled content by contractors.

Please feel free to contact me if you have any questions or require further information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jan Gouveia".

Jan Gouveia  
Vice President for Administration

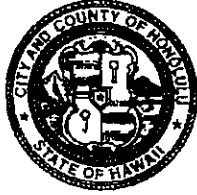
c: Duff Zwald, Director, Office of Procurement  
and Real Property Management

2444 Dole Street, Bachman Hall  
Honolulu, Hawaii 96822  
Telephone: (808) 956-6405  
Fax: (808) 956-9701

An Equal Opportunity/Affirmative Action Institution

DEPARTMENT OF BUDGET AND FISCAL SERVICES  
**CITY AND COUNTY OF HONOLULU**  
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813  
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: [www.honolulu.gov](http://www.honolulu.gov)

KIRK CALDWELL  
MAYOR



NELSON H. KOYANAGI, JR.  
DIRECTOR

GARY T. KUOKAWA  
DEPUTY DIRECTOR

October 2, 2014

Dean H. Seki  
State Procurement Code Taskforce  
Department of Accounting  
and General Services  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Dear Chair Seki,

**SUBJECT: Repeal of the Recycled Products Preference**

The Department of Budget and Fiscal Services, City and County of Honolulu, **strongly supports** the repeal of Hawaii Revised Statutes Section 103D-1005, relating to the procurement of recycled products.

The recycled products preference and any bid preference promotes inefficiencies in the State's Procurement Code and when applied will prevent the City from awarding to the offeror who provides the best value. Bid preferences require additional time and resources for review and analysis. Bid preferences increase the chances of a protest or complaint. Bid preferences complicate and further delay the procurement process and increase the cost to the City.

Repealing the recycled products preference will allow the City to operate more effectively and efficiently.

Mahalo for the opportunity to provide written testimony to the taskforce. Should you have any questions or concerns, please feel free to contact [bfspurchasing@honolulu.gov](mailto:bfspurchasing@honolulu.gov).

Sincerely,

A handwritten signature in cursive script that reads "Michael F. Hiu".

Michael F. Hiu  
Assistant Purchasing Administrator



## BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU  
630 SOUTH BERETANIA STREET  
HONOLULU, HI 96843



October 6, 2014

KIRK CALDWELL, MAYOR

DUANE R. MIYASHIRO, Chair  
ADAM C. WONG, Vice Chair  
MAHEALANI CYPHER  
THERESIA C. McMURDO  
DAVID C. HULIHEE

ROSS S. SASAMURA, Ex-Officio  
FORD N. FUCHIGAMI, Ex-Officio

ERNEST Y. W. LAU, P.E.  
Manager and Chief Engineer

ELLEN E. KITAMURA, P.E.  
Deputy Manager and Chief Engineer

Mr. Dean H. Seki, Comptroller  
State of Hawaii  
Department of Accounting and  
General Services  
P.O. Box 119  
Honolulu, Hawaii 96810-0119

Dear Mr. Seki:

Subject: Recycled Products Preference

The Board of Water Supply (BWS) voted to repeal Hawaii Revised Statutes § 103D-1005 Recycled Products as it applies to construction solicitations issued pursuant to § 103D-302 because of the impracticality of determining the percent of recycled content required to qualify for the preference. It is difficult to determine the percent required to qualify for the preference when calculating the various products such as asphalt, tires, crushed concrete for base, and paving materials that could possibly be used in the construction.

For bid evaluation purposes, five percent of the item is reduced from the bidder's offer to determine the lowest bid. The quantities and items that could be submitted by the bidders can be different. This difference makes verification challenging and questionable.

If you have any questions, please contact Vicki Kitajima of our Procurement Office at 748-5071.

Very truly yours,

ERNEST Y. W. LAU, P.E.  
Manager and Chief Engineer

1065 Ahua Street  
Honolulu, HI 96819  
Phone: 808-833-1681 FAX: 839-4167  
Email: [info@gcahawaii.org](mailto:info@gcahawaii.org)  
Website: [www.gcahawaii.org](http://www.gcahawaii.org)



**GCA of Hawaii**  
GENERAL CONTRACTORS ASSOCIATION OF HAWAII  
Quality People. Quality Projects.

October 6, 2014

**HAND-DELIVERED**

Honorable Dean Seki, Comptroller  
Chair, Procurement Task Force  
Comptroller, Department of Accounting and General Services  
State of Hawaii  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

**RE: Repeal of Recycled Products Preference**

Dear Comptroller Seki,

Thank you for the opportunity to share the General Contractors Association of Hawaii's (GCA) position in support of repealing the Recycled Products Preference in public works construction projects. While GCA understands the intent behind the recycled products preference, the statistics gathered reflect that the preference is rarely used and has had little impact on carrying out its intent. The 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.


The GCA is opposed to all procurement preferences in public works construction because it generally complicates the administration of the procurement process. Furthermore, such preferences ultimately cost the State of Hawaii and its taxpayer's additional funds and often do not achieve the goals intended in passage of the initial legislation.

The Recycled Products Preference is rarely used in bids for state public works construction contracts, which was reflected in the data gathered from the various agencies over the last two fiscal periods. The Recycled Products Preference was not used in 2013 and used only once in 2014. The practices and attitudes of businesses in Hawaii have changed since the enactment of the original law, with more being sensitive to the impact of construction elements on the environment. Both private businesses and public agencies have a greater awareness of environmental impacts of various products from recycling of paper products to aluminum cans and glass bottles such that a preference for recycled product is unnecessary and should be repealed. For these reasons, we believe the Recycled Products Preference, similar to other preferences are not necessary and further complicate the procurement process.

Honorable Dean Seki  
Chair, Procurement Task Force  
Comptroller, Department of Accounting and General Services  
October 6, 2014  
Page 2

Thank you for the opportunity to share our concerns and for considering our position.

With best regards,



Sherman Wong  
GCA Task Force Representative

# Hawai'i Construction Alliance

P.O. Box 179441  
Honolulu, HI 96817  
(808) 348-8885

---

October 6, 2014

Dean Seki, Comptroller  
Department of Accounting and General Services  
1151 Punchbowl Street  
Honolulu, Hawai'i 96813

RE: Recycled Products Preference

Dear Mr. Seki,

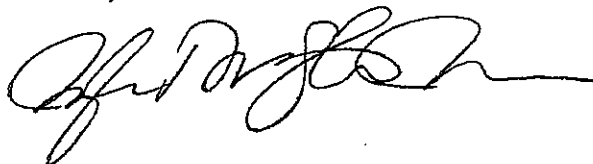
The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Laborers' International Union of North America, Local 368; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

The Hawai'i Construction Alliance is one of the entities named to serve as a member of the task force established by SCR92 (2013) 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.

At the September 8, 2014 meeting of the task force, members were asked to cast a vote to repeal, modify, or make no changes to the Recycled Products Preference. The Hawai'i Construction Alliance cast a vote to make no changes to the Recycled Products Preference. We believe that the existing preference for recycled products encourages environmentally responsible behavior in the procurement of public works construction projects.

We appreciate the opportunity to serve as a member of the task force. We look forward to continued discussions on how the State of Hawai'i and its counties can increase economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects.

Mahalo,



Tyler Dos Santos-Tam  
Executive Director  
Hawai'i Construction Alliance  
execdir@hawaiiconstructionalliance.org

# **BIA-HAWAII**

**BUILDING INDUSTRY ASSOCIATION**

THE VOICE OF THE CONSTRUCTION INDUSTRY

## 2014 Officers

### President

Brian K. Adachi  
BKA Builders, Inc.

### President-Elect

Richard Hobson, Jr.  
Gentry Homes, Ltd.

### Vice President

Craig Washofsky  
Servco Home & Appliance Distribution

### Treasurer

Guy J. Shindo  
First Hawaiian Bank

### Secretary

Evan Fujimoto  
Graham Builders, Inc.

### Special Appointee-Builder

Paul D. Silen  
Hawaiian Dredging Construction Co., Inc.

### Special Appointee-Builder

Mark Kennedy  
HASEKO Construction Management  
Group, Inc.

### Special Appointee-Associate

Dean Uchida  
SSFM International, Inc.

### Immediate Past President

Greg Thielen  
Complete Construction Services Corp.

### Chief Executive Officer

Gladys Marrone  
BIA-Hawaii

## 2014 Directors

### Anthony Borge

RMA Sales

### Carleton Ching

Castle & Cooke Hawaii, Inc.

### Chris Cheung

CC Engineering & Construction, Inc.

### Clifton Crawford

C&J Contracting, Inc.

### Eric Bass

D.R. Horton, Schuler Division

### Gary T. Okimoto

Honolulu Wood Treating

### Lili Shintani

Alan Shintani, Inc.

### Mark Hertel

Inter-Island Solar Supply, Oahu-Maui-  
Hawaii-Kauai

### Marshall Hickox

Homeworks Construction, Inc.

### Michael Watanabe

JW, Inc.

### Ryan Engle

Bays Lung Rose & Holma

### Stephen Hanson

simplcityHR by ALTRES

November 4, 2014

Honorable Dean Seki, Comptroller  
Chair, Procurement Task Force  
Comptroller, Department of Accounting and General Services  
State of Hawaii  
c/o Mr. Eric K. Nishimoto  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

via email: [eric.k.nishimoto@hawaii.gov](mailto:eric.k.nishimoto@hawaii.gov)

## RE: REPEAL OF RECYCLED PRODUCTS PREFERENCES

Dear Comptroller Seki,

My name is Gladys Marrone, CEO 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 supports the repeal of Hawaii Revised Statutes Section 103D-1005, relating to the recycled products preference.

HRS §103D-1005 creates additional costs for the agency through increased administration, delays, and higher winning bids. The additional hours and effort required by procurement officers to administer the preference represents serious inefficiencies and added costs. Delays caused by a longer process and higher chances of protest result in significant loss to both the agency and the contractor. Furthermore, preferences prevent the agency from awarding the bid which offers the best value.

While BIA-Hawaii appreciates the intent of the recycled products preference to encourage the use of recycled material, we believe the costs and unintended consequence outweigh the benefits.

We appreciate the opportunity to provide our comments in support of the repeal of the recycled products preference.

Sincerely,



Gladys Marrone, CEO  
BIA-Hawaii

## APPENDIX D

### SUMMARY OF PROTEST DATA

# PROTEST DATA SUMMARY

FY2013	PARTICIPATING STATE AGENCIES				C&C OF HONOLULU	
	DAGS	DOE	DOT	UH	BFS	BWS
No. Projects Awarded	59	187	165	47	108	16
No. Projects Protested	11	3	7	2	9	0
No. Protests	15	7	11	2	11	0
No. Protests Before B.O.	1	2	0	0	2	NA
No. Protests After B.O. Before Award	14	2	9	1	4	NA
No. Protests After Award	0	3	2	1	5	NA
No. Protests Resulting in Cancellation	0	1	4	0	1	NA
No. Protests of Solicitation Content	1	0	0	0	3	NA
No. Protests of Subcontractor Listing	14	4	3	2	5	NA
Missing Subcontractor	13	2	1	1	4	NA
Unlicensed Subcontractor	1	0	2	2	1	NA
Other	0	2	8	0	0	NA
No. Protests Ending at PO's Response	6	6	11	2	9	NA
No. Protests Ending at DCCA	9	0	0	0	0	NA
No. Protests Ending in Judicial System	0	1	0	0	0	NA
No. Protests in Progress	0	0	0	0		NA
No. Protested Projects Unawarded	0	0	0	0	2	NA
Avg Time for PO's Response	30.6	102.7	72.6364	41.5	113	NA
Avg Time for Admin Review Response	14.3	NA	NA	NA	NA	NA
Avg Duration of Protest	53.7	283.4	115.7	49.5	115.2	NA
Avg Time from B.O. to Award of Protested Projects	83.5	904.5	250.7	130	127.25	NA
No. Protests Successfully Denied	14	6	4	0	5	NA
No. Protests Upheld	1	0	1	0	2	NA
No. Protests Withdrawn	0	0	1	0	2	NA
No. Protests Resolved by Other Methods	0	0	0	2	2	NA
No. Protests Resulting in Canceled Solicitation	0	1	5	0	0	NA

NOTES:

1. It should be noted that DOE's statistics are adversely affected due to protests received for one of its three projects protested which went all the way to judicial hearing.
2. The data set from BFS is incomplete.
3. No protest data was received from BWS.

# PROTEST DATA SUMMARY

FY2014	PARTICIPATING STATE AGENCIES				C&C OF HONOLULU	
	DAGS	DOE	DOT	UH	BFS	BWS
No. Projects Awarded	57	76	112	48	59	5
No. Projects Protested	3	3	6	6	6	0
No. Protests	4	3	11	6	7	0
No. Protests Before B.O.	0	1	0	0	2	NA
No. Protests After B.O. Before Award	4	1	11	6	4	NA
No. Protests After Award	0	1	0	0	1	NA
No. Protests Resulting in Cancellation	0	0	0	0	0	NA
No. Protests of Solicitation Content	0	1	0	0	1	NA
No. Protests of Subcontractor Listing	4	1	1	3	2	NA
Missing Subcontractor	4	0	0	3	0	NA
Unlicensed Subcontractor	0	0	0	0	0	NA
Other	0	1	10	3	0	NA
No. Protests Ending at PO's Response	4	2	9	6	1	NA
No. Protests Ending at DCCA	0	1	0	0	0	NA
No. Protests Ending in Judicial System	0	0	0	0	0	NA
No. Protests In Progress	0	0	2	0	0	NA
No. Protested Projects Unawarded	0	1	2	0	NA	NA
Avg Time for PO's Response	42.8	99.7	35.9	52.0	8.428571	NA
Avg Time for Admin Review Response	NA	N.A.	NA	NA	NA	NA
Avg Duration of Protest	52.8	111.7	40.6	58.8	43	NA
Avg Time from B.O. to Award of Protested Projects	70.0	166.3	259.3	93.2	17.71429	NA
No. Protests Successfully Denied	3	3	7	6		
No. Protests Upheld	0	0	0	0		
No. Protests Withdrawn	1	0	1	0		
No. Protests Resolved by Other Methods	0	0	0	0		
No. Protests Resulting in Canceled Solicitation	0	0	1	0		

## NOTES:

1. It should be noted that DOT's average from B.O. to award was adversely affected by the rebid of one of the protested projects. Two of DOT's protests are in process.
2. The data set from BFS is incomplete.
3. No protest data was received for this fiscal year from BWS.



**INFO ON PROTESTOR FREQUENCY**

<u>FY2013</u>	DAGS	DOE	DOT	UH	BFS	TOTAL
Contractor A	0	0	0	0	1	1
Contractor B	1	0	0	0	0	1
Contractor C	0	0	0	0	1	1
Contractor D	2	0	0	0	0	2
Contractor E	1	0	0	0	0	1
Contractor F	1	0	0	0	0	1
Contractor G	0	0	0	0	1	1
Contractor H	0	0	0	0	1	1
Contractor I	0	1	0	0	0	1
Contractor J	0	1	0	0	0	1
Contractor K	0	1	0	0	0	1
Contractor L	0	0	0	1	0	1
Contractor M	0	0	0	0	1	1
Contractor N	0	0	1	0	0	1
Contractor O	0	0	0	0	1	1
Contractor P	1	0	0	0	0	1
Contractor Q	0	0	1	0	0	1
Contractor R	0	0	0	0	2	2
Contractor S	0	4	0	0	0	4
Contractor T	8	0	1	0	1	10
Contractor U	1	0	0	0	0	1
Contractor V	0	0	1	0	2	3
Contractor W	0	0	1	0	0	1
Contractor X	0	0	1	0	0	1
Contractor Y	0	0	0	1	0	1
Contractor Z	0	0	2	0	0	2
Contractor AA	0	0	3	0	0	3
<u>FY2014</u>	DAGS	DOE	DOT	UH	BFS	TOTAL
Contractor BB	0	0	0	1		1
Contractor CC	0	0	0	1		1
Contractor DD	0	0	0	1		1
Contractor EE	0	0	0	1		1
Contractor H	0	0	6	0		6
Contractor L	0	1	0	0		1
Contractor FF	0	0	1	0		1
Contractor GG	2	0	0	0		2
Contractor HH	0	0	1	0		1
Contractor N	0	0	1	0	1	2
Contractor II	0	1	1	0		2
Contractor JJ	0	0	0	1		1
Contractor R	0	0	1	0		1
Contractor KK	0	0	0	1		1
Contractor LL	1	0	0	0		1
Contractor T	1	1	0	0		2
Contractor MM	0	0	0	0	1	1

# APPENDIX E

## SUBCONTRACTOR LISTING REQUIREMENT

### Tally Sheet of Votes Taken

## DECISION MAKING - VOTING

### STATE PROCUREMENT CODE TASK FORCE

(S.C.R. 92, S.D. 2, 2013 LEGISLATIVE SESSION)

KALANIMOKU BUILDING, ROOM 426

1151 PUNCHBOWL STREET

MONDAY - OCTOBER 6, 2014

1:30 P.M.

Name	Organization	Affiliation	Present	Not Present	Subcontractor Listing		
					Repeal	Modify	No Change
<b>Dean Seki (Comptroller)</b>	<b>Dept. of Accounting &amp; General Services (DAGS)</b>	State	X				X
Eric K. Nishimoto (alternate)	Dept. of Accounting & General Services (DAGS)	State	X				
<b>Sarah Allen</b>	<b>State Procurement Office (SPO) *</b>	State	X		X		
Paula Youngling (alternate)	State Procurement Office (SPO)	State		X			
<b>Christian Butt</b>	<b>Department of Education (DOE)</b>	State	X		X		
Duane Kashiwai (alternate)	Department of Education (DOE)	State		X			
<b>Jadine Urasaki</b>	<b>Department of Transportation (DOT)</b>	State	X				X
Tammy Lee (alternate)	Department of Transportation (DOT)	State	X				
<b>Duff Zwald</b>	<b>University of Hawaii (UH)</b>	State	X		X		
Karlee Hisashima (alternate)	University of Hawaii (UH)	State		X			
<b>Hawley Iona</b>	<b>Office of Hawaiian Affairs (OHA)</b>	State					
<b>Michael Hiu</b>	<b>Budget &amp; Fiscal Services Department</b>	County	X		X		
<del>Ernie Lau</del> <b>Vicky Kitajima</b>	<b>Board of Water Supply (BWS)</b>	County					X
<b>Nicole Chapmen</b>	<b>Honolulu Authority for Rapid Transit (HART)</b>	County	X		Abstain		
Susan Yamaguchi (alternate)	Honolulu Authority for Rapid Transit (HART)	County		X			
<b>Sherman Wong</b>	<b>General Contractors Association (GCA)</b>	Constr. Industry					
<del>Shannon Pirada</del> <del>Wilfred Ideue (alternate)</del>	General Contractors Association (GCA)	Constr. Industry			X		
<b>Tim Lyons</b>	<b>Subcontractors Association of Hawaii (SAH)</b>	Constr. Industry	X				X
Gregg Serikaku (SAH alternate)	Plumbing & Mechanical Contractors	Constr. Industry	X				
<b>Kika G. Bukoski</b>	<b>Hawaii Building &amp; Constr. Trade Council (HBCTC)</b>	Constr. Industry	X				X
<del>Tyler</del> <del>Peter Lee</del>	Hawaii Construction Alliance	Constr. Industry			X		
* Looking to repeal now but modify later							

Note: Names in bold print are the designated Task Force Members. Non-bold names are designated alternates.

# APPENDIX F

## SUBCONTRACTOR LISTING REQUIREMENT

Data

**SUMMARY SHEET  
IMPACT OF SUBCONTRACTOR LISTING ON AWARDS**

FY2013					
DEPARTMENT	INCREASED COST	TOTAL AWARDS	# AWARDS AFFECTED	TOTAL # AWARDS	
Accounting & General Services	\$397,254.00	\$52,208,639.00	2	60	
Education	\$68,899.00	\$150,921,083.00	2	187	
Transportation	\$0.00	\$326,544,265.00	0	165	
University of Hawaii	\$32,200.00	\$69,709,380.00	1	47	
C&C B&F	\$0.00	\$297,734,096.00	0	108	
C&C BWS	did not submit data	\$26,522,280.00	N.A.	16	
TOTALS*	\$498,353.00	\$897,117,463.00	5	583	
*excludes BWS since data not provided.					
INCREASE					0.06%

FY2014					
DEPARTMENT	INCREASED COST	TOTAL AWARDS	# AWARDS AFFECTED	TOTAL # AWARDS	
Accounting & General Services	\$777,259.00	\$32,231,236.00	11	57	
Education	\$217,241.00	\$71,900,000.00	6	76	
Transportation	\$780,821.12	\$344,614,180.69	4	84	
University of Hawaii	\$0.00	\$72,980,072.00	0	48	
C&C B&F	\$175,244.00	\$287,889,264.00	2	59	
C&C BWS	did not submit data	did not submit data		0	
TOTALS	\$1,775,321.12	\$521,725,488.69	23	324	
INCREASE					0.34%

# APPENDIX G

## THE SUBCONTRACTOR LISTING REQUIREMENT Position Papers

**SUMMARY OF POSITION STATEMENTS SUBMITTED FOR SUBCONTRACTOR LISTING BY TASK FORCE MEMBERS**

Organization	Position Statement Submitted		Date of Statement
	Yes	No	
<b>TASK FORCE COMMITTEE MEMBERS:</b>			
Dept. of Accounting & General Services (DAGS)	X		11/10/2014
State Procurement Office (SPO)*		X	
Dept. of Education (DOE)		X	
Dept. of Transportation (DOT)	X		10/24/2014
University of Hawaii (UH)		X	
Office of Hawaiian Affairs (OHA)		X	
Budget & Fiscal Services Dept. (C & C of Hon.)		X	
Board of Water Supply (BWS)		X	
Honolulu Authority for Rapid Transportation (HART)		X	
General Contractor's Association (GCA)	X		12/1/2014
Subcontractor's Association of Hawaii (SAH)	X		10/6/2014
Hawaii Construction Alliance		X	
Hawaii Building & Construction Trade Council	X		1/30/2015
<b>TASK FORCE NON-COMMITTEE MEMBERS:</b>			
None submitted.			

\*Sarah Allen, SPO changed her vote from "repeal" to "no change" by email to Eric Nishimoto, dated 1/18/15 and stated at the 1/20/15 Task Force meeting.

NEIL ABERCROMBIE  
GOVERNOR



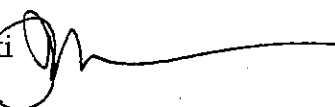
DEAN H. SEKI  
COMPTROLLER  
MARIA E. ZIELINSKI  
DEPUTY COMPTROLLER

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

NOV 10 2014

PM-1053.4

TO: The Procurement Code Task Force

FROM: Dean H. Seki   
Comptroller

SUBJECT: Subcontractor Listing Requirement  
Hawaii Revised Statutes §103D-302(B)  
Position Statement

The Department of Accounting and General Services (DAGS) voted "no change" to the existing subcontractor listing requirement because: 1) the law appears to be achieving its original intent (prevention of bid shopping by prime contractors); 2) the law does have some positive effects; and 3) the complications which have arisen as a result of the law, while difficult at times, have not been insurmountable.

Some positive effects of the law are: 1) prevention of bid shopping; 2) healthy competition among subcontractors for a fair price; 3) opportunity to check the listing prior to award, thereby bringing problems to light pre-award rather than post-award; and 4) rejection letters issued by DAGS and other government agencies for noncompliance (i.e., failure to list subcontractors, listing of subcontractors using the wrong name, listing of unlicensed subcontractors, etc.) have resulted in education of the bidders who receive such letters.

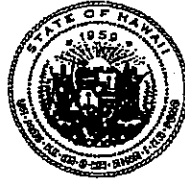
While the listing has caused problems for both contractors and procurement personnel, both parties agree that: 1) the licensing laws are difficult to understand because of the number of licenses, the amount of overlap between licenses, and the frequent need for interpretation by the Contractor's License Board; 2) the PVL licensing information online is sometimes outdated (both parties must be able to rely on the information obtained during online license searches); and 3) it is a relatively frequent source of protests. Agency evaluation of the listing is further complicated by the fact that a contractor's means and methods of work can impact the evaluation. The contractor's means and methods of work are not something that the government would typically specify or dictate; therefore, this information is neither available nor evident based on the subcontractor listing at the time of bid.



We feel that the evaluation process could be improved by working with the Contractor's License Board to improve their process and information rather than trying to modify or repeal the law at this time.

Protest data collected by the committee indicates that the subcontractor listing is the most frequent source of protests, which delay the start of construction. However, data collected by the committee on the cost impact of the subcontractor listing requirement indicated an overall increase to the cost of construction during fiscal years 2013 and 2014 to be on the order of 0.4% or less.

NEIL ABERCROMBIE  
GOVERNOR



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

FORD N. FUCHIGAMI  
INTERIM DIRECTOR

Deputy Directors  
RANDY GRUNE  
AUDREY HIDANO  
ROSS M. HIGASHI  
JADINE URASAKI

IN REPLY REFER TO:  
CON  
5.0704

October 24, 2014

Mr. Dean H. Seki  
State of Hawaii Comptroller  
Department of Accounting and General Services  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, HI 96813

Dear Comptroller:

Subject: RE: State Procurement Task Force Decision Making, the Hawaii  
Department of Transportation Position on the Subcontractor Listing

As a follow up action item regarding all members to provide their rationale to their vote and position on the Subcontractor Listing, the Hawaii Department of Transportation (DOT) vote on the HRS 103D-302(b) subcontractor listing requirement to remain unchanged based on public policy of furthering the purpose of the procurement code is provided.

It is well settled that the primary purpose of the subcontractor listing requirement is to prevent bid shopping and bid peddling. As adjudicated in *Okada Trucking*<sup>1</sup> (quoting *Hawaiian Dredging* (PCH-99-6 (August 9, 1999))), bid shopping, "is the use of the low bid already received by the general contractor to pressure other subcontractors into submitting even lower bids. Bid peddling, conversely, is an attempt by a subcontractor to undercut known bids already submitted to the general contractor in order to procure the job."

To allow general contractors to bid shop or to allow subcontractors to bid peddle would create an unfair government bidding environment, directly in conflict with the intent of the Procurement Code. Namely the HRS 103D-302(g) proviso, "[a]fter bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the public or to fair competition shall be permitted."

As a practical matter, what means will the purchasing agency charged with administering and managing the construction contract have in verifying that the work is done by properly licensed subcontractors?

<sup>1</sup> *Okada Trucking Co. v. Board of Water Supply*, 97 Hawaii 544, 40 P. 3d 946 (2001).


Mr. Dean H. Seki

CON 5.0704

Moreover, how will the purchasing agency satisfy other statutory requirements of verifying that the subcontractor has not been suspended or debarred, if the subcontractors are not known at the time the bids are opened?

Questions may be directed to Tammy Lee, DOT Contracts Office Supervisor, at (808) 587-2130.

Very truly yours,

  
FORD N. FUCHIGAMI  
Interim Director

c: Jadine Urasaki, Deputy Director of Projects  
Tammy Lee, Contracts Officer

1065 Ahua Street  
Honolulu, HI 96819  
Phone: 808-833-1681 FAX: 839-4167  
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**GCA of Hawaii**

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

December 1, 2014

Sent via E-mail: [Dean.H.Seki@hawaii.gov](mailto:Dean.H.Seki@hawaii.gov)

Honorable Dean Seki, Comptroller  
Chair, Procurement Task Force  
Department of Accounting and General Services, State of Hawaii  
Kalanimoku Building, Room 410  
1151 Punchbowl Street  
Honolulu, Hawaii 96819

SUBJECT: Repeal of the Subcontractor Listing Mandate under HRS, §103D-302(b)

Dear Comptroller Seki,

The General Contractors Association of Hawaii (GCA) supports the repeal of the subcontractor listing law as promulgated in Hawaii Revised Statutes (HRS), Section 103D-302(b) because it is increasing the cost of public works construction projects, delaying the delivery of projects due to contested bid submittals and hindering the overall procurement process. Additionally, the mandated subcontractor listing requirement is not consistent with the *ABA Model Procurement Code*, which Hawaii's Procurement Code is modeled after. We reject the arguments that allege that subcontractor listing is good public policy for reasons set forth below.

In the last decade the subcontractor listing requirement has been used beyond its legislative intent 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. As a result of the subcontractor listing requirement, the failure to list such subcontractor altogether or a subcontractor whose work would total more than one percent of the total contract could trigger a bid protest whereby the non-lowest bidder could throw out the lowest bidder from being awarded the contract. This has resulted in delays in awarding the contract to address the protest and in the event the low bidder is disqualified, also there is additional cost to the agency and taxpayers if the contract is awarded to another bidder.

**Hawaii's Subcontractor Listing Law and the Okada Trucking Decision**

Current law under HRS, Section 103D-302(b) requires the bidding contractor to list all subcontractors and their scope of work 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), has been widely 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.

The Hawaii Supreme Court Decision in *Okada* was directly contrary to what the Contractors License Board (CLB) advised in its Declaration to the Supreme Court, which among other points, referenced the 1993 Minutes of the CLB that declared that “the current statutes and rules allow a “B” general building contractor to perform all of the work involved on a structure that is built, being built, or to be built for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind . . .” The 1993 CLB Minutes further recognized that “the electrical, plumbing and elevator work must be performed by the appropriately licensed specialty contractor because of the special permits required by the Counties.” Due to the 2002 ruling in *Okada Trucking*, the subcontractor listing has become a dominant reason for bid protests. Bids that do not comply with this requirement may be considered non-responsive and be disqualified for consideration.

More recently, the subcontractor listing has been one of the highest used issues for awards to non-lowest bidders and administratively filed bid protests, which has resulted in increased cost of public projects, delay of contract award and further administrative burden for affected agencies. As mentioned, current statutes (HRS 103D-302(b)) and rules require the bidding contractor to list all subcontractors and their scope of work to be employed on public works projects unless the prime contractor has the required specialty license or will do the work himself. This requirement has resulted in numerous protests alleging that the bidder failed to list a required sub specialty contractor or that the listed subcontractor did not possess the required license and was therefore, not qualified to perform the work. As a result, taxpayer dollars are being unnecessarily spent because contracts are being awarded to second and third lowest bidders resulting in increasing the cost of the projects.

The repeal of the subcontractor listing would curb qualified low bids from being thrown out for mere technicality or an error in information on the subcontractor listing. General contractors have difficulty in ensuring listed subcontractors information is accurate and correct because most times bid prices from subcontractors are received right before the bid is due - i.e. minutes before bid is due. Due to the practices of subcontractors holding their prices until the last minute, the listed subcontractors information may contain incorrect or incomplete information which can disqualify a prime contractor’s bid as being non-responsive. Also, changes in the licenses by the Contractors’ License Board and creation of new C-68 licenses can result in a listed subcontractor who was previously qualified to do a specific sub craft now being considered unqualified and the bid considered unresponsive.

#### **Analysis of Data Collection & Projects Awarded After June 30, 2014**

The data collected for the Task Force on awards to non-low bidders due to subcontractor listing is incomplete although it attempts to reflect the last two fiscal years, FY 2013 and 2014 and how much the subcontractor listing is costing the state and its taxpayers. The data provides a bird’s eye view and is not yet complete as it does not reflect projects bid in FY 2014, but awarded post June 30, 2014. The Comptroller’s office limited the data collected for FY2014 to awarded projects up to June 30, 2014. Further review of projects awarded after June 30, 2014 will reflect big projects being awarded to non-low bidders due to discrepancies with the subcontractor listing and therefore resulting in project price increases upwards of over a million dollars. As you will see in the attached summary of data collected for FY 2013 and FY 2014 (up to June 30, 2014) in

GCA's Exhibit A, GCA's calculation reflects how the subcontractor listing has caused a significant cost increase for taxpayers.

Also missing from the report are past projects that experienced increased costs due to subcontractor listing which is not included in this report. However, below DAGS shared information with the Task Force reflecting the following impact of subcontractor listing on DAGS awards from FY 2005-FY 2012 as follows:

<u>Fiscal Year</u>	<u>DAGS Awards Affected by Subcontractor Listing</u>	<u>Total DAGS Awards</u>	<u>Total Increased Cost to Taxpayers</u>
FY2005	8	40	\$425,947.00
FY2006	0	33	\$0.00
FY2007	2	39	\$7,815,123.00
FY2008	6	77	\$841,639.00
FY2009	2	89	\$26,596.00
FY2010	4	64	\$1,115,517.00
FY2011	2	75	\$35,455.00
FY2012	1	41	\$21,458.00

The data above provided by DAGS reflect significant increased costs that the State had to pay due to discrepancies raised with the subcontractor listing.

**Hawaii's Procurement Law should follow the ABA Model Procurement Code**

For the reasons above, it is important to note that the *ABA Model Procurement Code* has no reference or requirement to a mandatory subcontractor listing form. The *ABA 2000 Model Procurement Code* is the Model code utilized by numerous states in delivering state and local spending in the procurement of goods, supplies, equipment, services, and construction. It would be beneficial for Hawaii to adopt the current provisions of the 2000 *ABA Model Procurement Code* to ensure proper delivery of publicly funded goods and services. Bid preferences and special interests have been embedded in Hawaii's procurement code making it difficult for the Code to properly deliver goods and services as intended by the Code. In order for the Procurement Code to apply equally and uniformly in the delivery of services and goods the elimination of bid preferences and special interests are necessary.

Thank you for the opportunity to share our position and support for the repeal of the subcontractor listing mandate pursuant to HRS, Section 103D-302(b).

Very truly yours,



Sherman Wong,  
GCA Representative  
Procurement Task Force

Encls.

cc: Kerry Yoneshige, Interim Comptroller  
Eric Nishimoto & Jolie Lee

**DEPARTMENT OF TRANSPORTATION**

**Awards to Non-Low Bidders due to Subcontractor Listing**

FY2013 (July 1, 2012 to June 30, 2013)

Department of Transportation                      Total # of Awards: 60

<u>Bid Open</u>	<u>Low Bidder</u>		<u>Low Bid</u>	<u>Awarded To</u>	<u>Award Amount</u>	<u>Increased Cost</u>	<u>Increase %</u>
5/13/2013	BCP Construction of Hawaii	\$	325,550.00	Hawaiian Dredging	\$ 347,350.00	\$ 21,800.00	6.70%
5/16/2013	GW Construction	\$	2,716,443.00	Hawaiian Dredging	\$ 3,413,000.00	\$ 696,557.00	25.64%
6/20/2013	Isemoto Contracting	\$	272,817.00	Stan's Contracting	\$ 317,300.00	\$ 44,483.00	16.31%
<b>DOE FY13 INCREASED COSTS</b>		<b>\$</b>	<b>3,314,810.00</b>		<b>\$ 4,077,650.00</b>	<b>\$ 762,840.00</b>	<b>23.01%</b>
<b>TOTAL AWARDS</b>							
					<b>\$326,544,265.00</b>		

FY 2014 - \*Awards up to June 30, 2014 only, Does Not Include Post June 30 awards bid in FY 14

Department of Transportation                      Total # of Awards: 84

<u>Bid Open</u>	<u>Low Bidder</u>		<u>Low Bid</u>	<u>Awarded To</u>	<u>Award Amount</u>	<u>Increased Cost</u>	<u>Increase %</u>
11/14/2013	Oceanic Companies	\$	158,218.88	FOPCO	\$ 198,000.00	\$ 39,781.12	25.14%
<b>DOE FY14 INCREASED COSTS</b>		<b>\$</b>	<b>158,218.88</b>		<b>\$ 198,000.00</b>	<b>\$ 39,781.12</b>	<b>25.14%</b>
<b>TOTAL AWARDS</b>							
					<b>\$ 344,614,180.69</b>		

**DEPARTMENT OF EDUCATION**

**Awards to Non-Low Bidders due to Subcontractor Listing**

FY2013 (July 1, 2012 to June 30, 2013)

Department of Education Total # of Awards: 187

<u>Bid Open</u>	<u>Low Bidder</u>		<u>Low Bid</u>	<u>Awarded To</u>	<u>Award Amount</u>	<u>Increased Cost</u>	<u>Increase %</u>
9/5/2012	Central Construction	\$	49,890.00	Stan's Contracting	\$ 69,300.00	\$ 19,410.00	38.91%
2/20/2013	E Ten Inc.	\$	199,000.00	Network Power Solutio	\$ 248,489.00	\$ 49,489.00	24.87%
<b>DOE FY13 INCREASED COSTS</b>		<b>\$</b>	<b>248,890.00</b>		<b>\$ 317,789.00</b>	<b>\$ 68,899.00</b>	<b>27.68%</b>
<b>TOTAL DOE AWARDS</b>					<b>\$150,921,083.00</b>		

FY 2014 - \*Awards up to June 30, 2014 only, does not include post June 30 awards bid in FY 14

Department of Education Total # of Awards: ?

<u>Bid Open</u>	<u>Low Bidder</u>		<u>Low Bid</u>	<u>Awarded To</u>	<u>Award Amount</u>	<u>Increased Cost</u>	<u>Increase %</u>
10/30/2013	International Roofing & Building	\$	207,450.00	Shioi Construction	\$ 298,600.00	\$ 91,150.00	43.94%
11/27/2013	F&H Construction	\$	920,000.00	Rambaud Electric	\$ 934,521.00	\$ 14,521.00	1.58%
2/12/2014	International Roofing & Building	\$	183,600.00	Site Engineering	\$ 255,700.00	\$ 72,100.00	39.27%
3/21/2014	F&H Construction	\$	739,000.00	Stan's Contracting	\$ 754,300.00	\$ 15,300.00	2.07%
6/12/2014	All Site Construction	\$	268,570.00	Builders, Inc.	\$ 289,568.00	\$ 20,998.00	7.82%
<b>DOE FY14 INCREASED COSTS</b>		<b>\$</b>	<b>2,318,620.00</b>		<b>\$ 2,532,689.00</b>	<b>\$ 214,069.00</b>	<b>9.23%</b>
<b>TOTAL AWARDS</b>					<b>Data Not yet available</b>		



**UNIVERSITY OF HAWAII**

**Awards to Non-Low Bidders due to Subcontractor Listing**

FY2013 (July 1, 2012 to June 30, 2013)

University of Hawaii Total # of Awards: 47

<u>Bid Open</u>	<u>Low Bidder</u>		<u>Low Bid</u>	<u>Awarded To</u>	<u>Award Amount</u>	<u>Increased Cost</u>	<u>Increase %</u>
9/21/2012	F&H Construction	\$	105,800.00	Primatech Construction,	\$ 138,000.00	\$ 32,200.00	30.43%
<b>UH FY13 INCREASED COSTS</b>		<b>\$</b>	<b>105,800.00</b>		<b>\$ 138,000.00</b>	<b>\$ 32,200.00</b>	<b>30.43%</b>
<b>TOTAL AWARDS</b>					<b>\$69,709,380.00</b>		

FY 2014 - \*Awards up to June 30, 2014 only, Does Not Include Post June 30 awards bid in FY 14

University of Hawaii Total # of Awards: 48

<u>Bid Open</u>	<u>Low Bidder</u>		<u>Low Bid</u>	<u>Awarded To</u>	<u>Award Amount</u>	<u>Increased Cost</u>	<u>Increase %</u>
No projects awarded between July 1, 2013 to June 30, 2014 were identified as affected by subcontractor listing.							
<b>UH FY14 INCREASED COSTS</b>		<b>\$</b>	<b>-</b>		<b>\$ -</b>	<b>\$ -</b>	
<b>TOTAL AWARDS</b>					<b>\$ 72,980,072.00</b>		

**DEPARTMENT OF ACCOUNTING & GENERAL SERVICES (DAGS)**

Awards to Non-Low Bidders due to Subcontractor Listing

FY2013 (July 1, 2012 to June 30, 2013)

DAGS

Total # of Awards: 60

<u>Bid Open</u>	<u>Low Bidder</u>	<u>Low Bid</u>	<u>Awarded To</u>	<u>Award Amount</u>	<u>Increased Cost</u>	<u>Increase %</u>
8/9/2012	Commercial Roofing & Water	\$ 1,380,423.00	Elite Pacific Const.	\$ 1,770,000.00	\$389,577.00	28.22%
11/29/2012	Allied Pacific Builders	\$ 76,028.00	Trace Industries	\$ 83,705.00	\$ 7,677.00	10.10%
3/28/2013	Commercial Sheet Metal	\$ 840,000.00	Elite Pacific Const.	\$ 965,000.00	\$ 125,000.00	14.88%
5/20/2013	Ryan Michael Corp.	\$ 26,620.00	Arisumi Brothers	\$ 56,950.00	\$ 30,330.00	113.94%
<b>DAGS FY13 INCREASED COSTS</b>		<b>\$ 2,323,071.00</b>		<b>\$ 2,875,655.00</b>	<b>\$552,584.00</b>	<b>23.79%</b>
<b>TOTAL AWARDS</b>				<b>\$52,208,639.00</b>		

FY 2014 - \*Awards up to June 30, 2014 only, Does Not Include Post June 30 awards bid in FY 14

DAGS

Total # of Awards: 57

<u>Bid Open</u>	<u>Low Bidder</u>	<u>Low Bid</u>	<u>Awarded To</u>	<u>Award Amount</u>	<u>Increased Cost</u>	<u>Increase %</u>
7/18/2013	HSI Mechanical Inc.	\$998,880.00	F&H Construction	\$ 1,090,000.00	\$ 91,120.00	9.12%
7/18/2013	Stan's Contracting	\$159,500.00	GW Construction	\$ 234,800.00	\$ 165,300.00	103.64%
8/8/2013	Hawaiian Bldng Maint.	\$164,400.00	Cont. Mechanical	\$ 205,037.00	\$ 40,637.00	24.72%
11/14/2013	Isemoto Contracting	\$220,300.00	Stan's Contracting	\$ 237,700.00	\$ 18,400.00	8.35%
1/19/2014	Stan's Contracting	\$583,700.00	Isemoto Contracting	\$ 641,500.00	\$ 57,800.00	9.90%
1/30/2014	F&H Construction	\$49,000.00	Isemoto Contracting	\$ 73,200.00	\$ 24,200.00	49.39%
4/17/2014	Su-Mo Builders	\$443,000.00	Allied Pacific Blders	\$ 575,500.00	\$ 132,500.00	29.91%
5/8/2014	Rambaud Electric LLC	\$155,137.00	Ted's Wiring	\$ 197,206.00	\$ 42,069.00	27.12%
5/29/2014	Sterling Pacific Const.	\$89,997.00	Isemoto Contracting	\$ 139,900.00	\$ 49,903.00	55.45%
6/5/2014	Hako Plumbing Inc.	\$197,430.00	Economy Plumbing	\$ 218,966.00	\$ 21,536.00	10.91%
<b>DAGS FY14 INCREASED COSTS</b>		<b>\$3,061,344.00</b>		<b>\$ 3,613,809.00</b>	<b>\$ 643,465.00</b>	<b>21.02%</b>
<b>TOTAL AWARDS</b>				<b>\$ 32,231,236.00</b>		

**CITY & COUNTY OF HONOLULU**

**Awards to Non-Low Bidders due to Subcontractor Listing**

FY2013 (July 1, 2012 to June 30, 2013)

C & C

Total # of Awards: 108

<u>Bid Open</u>	<u>Low Bidder</u>		<u>Low Bid</u>	<u>Awarded To</u>	<u>Award Amount</u>	<u>Increased Cost</u>	<u>Increase %</u>
4/1/2013	Commercial Sheet Metal	\$	352,000.00	Elite Pacific	\$ 388,000.00	\$ 36,000.00	10.23%
6/27/2013	Triton Marine Construction	\$	406,256.00	Jennings Pacific	\$ 545,500.00	\$ 139,244.00	34.27%
<b>C &amp; C FY13 INCREASED COSTS</b>		<b>\$</b>	<b>758,256.00</b>		<b>\$ 933,500.00</b>	<b>\$ 175,244.00</b>	<b>23.11%</b>
TOTAL AWARDS							
\$					297,734,096.00		

FY 2014 - \*Awards up to June 30, 2014 only, Does Not Include Post June 30 awards bid in FY 14

C & C

Total # of Awards: ?

<u>Bid Open</u>	<u>Low Bidder</u>		<u>Low Bid</u>	<u>Awarded To</u>	<u>Award Amount</u>	<u>Increased Cost</u>	<u>Increase %</u>
4/4/2014	KSC Construction		\$124,000.00	MJ Construction	\$ 195,000.00	\$ 71,000.00	57.26%
4/29/2014	Ilima International, Inc.		\$250,270.00	Alan Shintani	\$ 279,784.00	\$ 29,514.00	11.79%
<b>C&amp;C FY14 INCREASED COSTS</b>			<b>\$374,270.00</b>		<b>\$ 474,784.00</b>	<b>\$ 100,514.00</b>	<b>26.86%</b>
TOTAL AWARDS							

10/6/14  
Tim Lyons  
SAH Handout

**SAH - Subcontractors Association of Hawaii**  
1188 Bishop St., Ste. 1003\*\*Honolulu, Hawaii 96813-3304  
Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

## **REASONS FOR SUBCONTRACTOR LISTING**

*Section 103D-302 HRS Competitive Sealed Bidding. (a) and (b) reads as follows:*

- a. *Competitive sealed bidding does not include negotiations with bidders after the receipt and opening of bids.*
- b. *If the invitation for bids is for construction, it shall specify that all bids shall include the name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the contract and the nature and scope of the work to be performed by each.*

This section requires that on public works contracts (state and county) when a prime contractor (general) bids a job they have to list all the subs that they propose to use and the nature and scope that each one of those subs is going to do. THIS IS GOOD PUBLIC POLICY.

Unlike private work and even commercial work when government uses 103D-302 Competitive Sealed Bidding you're going for the lowest bid. The agency looks for the lowest prime (general) contractor bid to do the project and each general contractor is looking at the lowest bid submitted by various subcontractors (painting, flooring, roofing, etc.). A general contractor feels compelled to use the lowest bid of subcontractors who have provided prices because if he does not, his competitor may very well use that price and then the other general contractor's total gross price may be lower as a result and he will get the job.

Subcontractor listing promotes certainty that allows the subcontractors to know that their price was used and that if that general contractor gets the job, they too will then get their job. The alternative is what we refer to as "bid chiseling or bid shopping" and in low bid situations this simply does not work well. All it does is provide an incentive to the subcontractor to cut corners; use inferior materials or provide inferior workmanship all based on a lower cost because they were pressured into agreeing to a price that is already lower than what they agreed would be their lowest price.

Subcontractor listing is good for government jobs as well because it ensures that the contractor and the subcontractor will provide their work based on the specifications of the job without a great deal more enforcement. Without subcontractor listing government monitoring agencies would need to increase their workforce and increase their jobsite monitoring activity to be sure that these corners were not cut.

Subcontractor listing protects the smaller subcontractors. There is typically one (1) general on the job and it there could be as many as nineteen (19) or twenty (20) subcontractors. The general contractor is just that, he is the general of the job or the boss of the job.

# PUBLIC CONTRACT CODE

## SECTION 4100-4114

CALIFORNIA

4100. This chapter may be cited as the "Subletting and Subcontracting Fair Practices Act."

4101. The Legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alteration, and repair of public improvements often result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among prime contractors and subcontractors, and lead to insolvencies, loss of wages to employees, and other evils.

4103. Nothing in this chapter limits or diminishes any rights or remedies, either legal or equitable, which:

(a) An original or substituted subcontractor may have against the prime contractor, his or her successors or assigns.

(b) The state or any county, city, body politic, or public agency may have against the prime contractor, his or her successors or assigns, including the right to take over and complete the contract.

4104. Any officer, department, board, or commission taking bids for the construction of any public work or improvement shall provide in the specifications prepared for the work or improvement or in the general conditions under which bids will be received for the doing of the work incident to the public work or improvement that any person making a bid or offer to perform the work, shall, in his or her bid or offer, set forth:

(a) (1) The name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater.

(2) (A) Subject to subparagraph (B), any information requested by the officer, department, board, or commission concerning any subcontractor who the prime contractor is required to list under this subdivision, other than the subcontractor's name and location of business, may be submitted by the prime contractor up to 24 hours after the deadline established by the officer, department, board, or commission for receipt of bids by prime contractors.

(B) A state or local agency may implement subparagraph (A) at its option.

~~\*~~

## NEW MEXICO STATUTES AND CODES

### Section 13-4-34 - Listing of subcontractors; requirements.

#### Listen

13-4-34. Listing of subcontractors; requirements. A. Any using agency taking bids for any public works construction project shall provide in the bidding documents prepared for that project a listing threshold which shall be five thousand dollars (\$5,000) or one-half of one percent of the architect's or engineer's estimate of the total project cost, not including alternates, whichever is greater. If the bidding documents do not include a listing threshold, then the using agency shall supply the listing threshold. If the listing threshold has not been included, the bid opening shall be postponed until the using agency has complied with this section. Any contractor or subcontractor interested in bidding may apply to the district court in the county in which the project will be located for an injunction preventing the bid opening until the using agency has complied with this section. Any person submitting a bid shall in his bid set forth: (1) the name and the city or county of the place of business of each subcontractor under subcontract to the contractor who will perform work or labor or render service to the contractor in or about the construction of the public works construction project in an amount in excess of the listing threshold; and (2) the category of the work that will be done by each subcontractor. The contractor shall list only one subcontractor for each category as defined by the contractor in his bid. B. A bid submitted by a contractor who fails to comply with the provisions of Subsection A of this section is a nonresponsive bid which shall not be accepted by a using agency.

Loading...

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- Max

13-4-34. Listing of subcontractors; requirements.

A. Any using agency taking bids for any public works construction project shall provide in the bidding documents prepared for that project a listing threshold which shall be five thousand dollars (\$5,000) or one-half of one percent of the architect's or engineer's estimate of the total project cost, not including alternates, whichever is greater. If the bidding documents do not include a listing threshold, then the using agency shall supply the listing threshold. If the listing threshold has not been included, the bid opening shall be postponed until the using agency has complied with this section. Any contractor or subcontractor interested in bidding may apply to the district court in the county in which the project will be located for an injunction preventing the bid opening until the using agency has complied with this section. Any person submitting a bid shall in his bid set forth:

(1) the name and the city or county of the place of business of each subcontractor under subcontract to the contractor who will perform work or labor or render service to the contractor in or about the construction of the public works construction project in an amount in excess of the listing threshold; and

(2) the category of the work that will be done by each subcontractor. The contractor shall list only one subcontractor for each category as defined by the contractor in his bid.

B. A bid submitted by a contractor who fails to comply with the provisions of Subsection A of this section is a nonresponsive bid which shall not be accepted by a using agency.

- See more at: <http://statutes.laws.com/new-mexico/chapter-13/article-4/section-13-4-34#sthash.qANvoKQp.dpuf>



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**

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KIKA G. BUKOSKI  
Executive Director

January 30, 2015

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Workers United Union of Roofer  
Local 221

State Procurement Code Task Force  
c/o Department of Accounting and General Services- Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Re: State Procurement Code Task Force- Sub Listing/ Protests

Aloha Task Force Members;

Pursuant to Senate Concurrent Resolution 92, Senate Draft 2 (2013), the State Procurement Code Task Force was charged to:

- 1) Identify and propose amendments, if any, to the state procurement code that may better promote economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects, including but not limited to a review of all bid preferences on public works projects;
- 2) Solicit input from the construction industry and determine whether administrative rules governing contractors reflect the intent of the Legislature and chapter 103D, Hawaii Revised Statutes; and
- 3) Submit its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2015.

The Task Force focused on four primary areas of discussion: 1) Bid Preferences, 2) Subcontractor Listing, 3) Bid Protests, and 4) Identifying and Addressing Bad Contractors.

The Hawaii Building and Construction Trades Council, AFL-CIO understands that the sub-listing requirement is perceived as the sole cause of protests, delays, increased costs etc. and that generally speaking, protests in public works procurement is a bad thing.

We respectfully disagree. Protests allow for fairness, objectivity and transparency which is especially important when expending tax payer dollars on publicly funded projects. Protests in the procurement process ensures that the contractors who are awarded such contracts are both 'responsive' and 'responsible', two critical components of procurement on public works projects.



Although we are encouraged by and acknowledge the many responsible contractors that do business in Hawaii, in many cases we find that the protest process often uncovers unqualified, unlicensed, unscrupulous contractors that may otherwise go undetected and who continue to abuse the process for their personal gain at the expense of the tax payers. Processes such as sub listing and protests assist in keeping the public procurement system honest.

The success and/or failures of the public procurement process should not be based solely on time and money, but also on the assurance that all parties involved are treated fairly and objectively and that those performing public works contracts are *'responsible'* and duly qualified to perform the work required by the contracts in accordance with state and local contracting law.

The Task Force Report to the Legislature states that Hawaii's Procurement Code is modeled after the American Bar Association (ABA) Model Procurement Code and that the ABA Model Procurement Code does not provide for sub listing requirements.

Although this statement may be technically accurate, it is important to note that the ABA Model Procurement Code is designed to provide general guidelines for state and local government entities to consider and that because something is included or not included in the ABA Model Code does not mean a state or local government entity is subject to including and/or excluding it in their respective procurement processes.

It was noted in discussion and generally agreed that Hawaii's Procurement Codes do not necessarily follow and/or include all provisions found in the ABA Model Procurement Code and that this exception is not exclusive to sub listing.

It is also important to note that although the ABA Model Procurement Code may not cite specific language with regards to sub listing, it does however cite specific language regarding the importance of determining the *'responsibility'* or lack thereof, (*'non-responsibility'*) of the bidder (contractor). In this determination, the ABA Model Procurement Code cites as one of the standards or *factors* amongst others to be considered as, whether a prospective contractor (bidder) has...

“...available personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements.”

As such, the sub listing requirement allows the procuring agency to determine if a prospective contractor (bidder) is *'responsible'*, properly licensed and qualified to perform the contract *'or'* has engaged or employed a sub-contractor who is.

Thus, in addition to addressing concerns regarding a practice commonly known as *'bid shopping'* or *'bid chiseling'*, sub listing also provides a mechanism for the procuring agency to determine whether a prospective contractor (bidder) is a *'responsible'* bidder and equipped to perform the specifications of the contract.

On the issue of Bad Contractors and Past Performance, some Task Force members discussed relaxing policy's that require Competitive Sealed Bidding be used as the primary *'go to'* method of procurement unless otherwise justified, and that more discretion be given to procuring agencies to use other methods such as Competitive

## Sealed Proposals.

We would like to point out that provisions that prioritize *Competitive Sealed Bidding* as the 'primary' method (ABA Model Code Part B, Section 3-201- Methods of Source Selection) of public works procurement is specifically cited in the ABA Model Procurement Code.

The conditional use of the *Competitive Sealed Procurement* method as opposed to the Bidding method as cited in ABA Model Code Part B, Section 3-203 (1) (a) states that,

" A contract may be entered into by competitive sealed proposals when the Chief Procurement Officer...determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the [State]".

Hawaii's procurement code(s) agrees with the ABA Model Procurement Code in this regard and as such should maintain similar provisions.

Lastly, discussions regarding the consideration of past- performance in Competitive Sealed Bidding was met with general apprehension. The potential subjectivity believed to exist while collecting and using data when considering the past-performance of any given contractor (bidder) in the bid process was noted.

The Competitive Sealed Proposal method appeared to be the preferred method of procurement whereas the consideration of past-performance is generally accepted during the evaluation process.

Interesting to note, the ABA Model Procurement Code describes the *Competitive Sealed Proposal* process as '*subjective*' in nature and open to discretion as opposed to the *Competitive Sealed Bidding* process where it is described as '*objective*' and confined to specific conditions and requirements as provided for in the Invitation For Bids.

If 'subjectivity' in the bid process, as was noted in discussions related to past-performance with the Competitive Sealed Bid method, is a true concern, then how would the Competitive Sealed Proposal method be any less subjective?

Hawaii's procurement code is doing the job it was intended to do. In following the ABA Model Procurement Code and establishing the Competitive Sealed Bid method as the primary method of procurement unless otherwise justified, the existing process has provided public trust, safety, integrity and has ensured that bids submitted are disposed of fairly and equitably to contractors that are duly qualified to perform and execute the requirements of the contract.

Differences of interpretation and application of the procurement code from one procuring agency to another was discovered during discussions. It was noted that an apparent lack of post-award contract management and oversight exists.

Rather than faulting sub listing as the sole cause of protests, project delays, inefficiencies and added costs, we should also consider such administrative inconsistencies and lack of oversight as additional contributing factors, and continue to have discussion to improve

in these areas as well. Alternatives to consider might include consolidation of certain duties, responsibilities and oversight including but not limited to protests to rest within the State Procurement Office and its Chief Procurement Officer.

Although not in complete agreement with all that the Task Force discussed and/or included in its Report to the Legislature, the general discussion was productive and very helpful in identifying and understanding areas of concern and viewpoints from various affected stakeholders. We hope discussions will continue and we look forward to participating going forward.

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

# APPENDIX H

## IDENTIFYING AND ADDRESSING 'BAD' CONTRACTORS

**SUMMARY OF POSITION STATEMENTS SUBMITTED ON THE ISSUE OF BAD CONTRACTORS BY TASK FORCE MEMBERS**

Organization	Position Statement Submitted		Date of Statement
	Yes	No	
<b>TASK FORCE COMMITTEE MEMBERS:</b>			
Dept. of Accounting & General Services (DAGS)			
State Procurement Office (SPO)*			
Dept. of Education (DOE)			
Dept. of Transportation (DOT)			
University of Hawaii (UH)			
Office of Hawaiian Affairs (OHA)			
Budget & Fiscal Services Dept. (C & C of Hon.)			
Board of Water Supply (BWS)			
Honolulu Authority for Rapid Transportation (HART)			
General Contractor's Association (GCA)	X		12/1/2014
Subcontractor's Association of Hawaii (SAH)			
Hawaii Construction Alliance			
Hawaii Building & Construction Trade Council			
<b>TASK FORCE NON-COMMITTEE MEMBERS:</b>			
International Union of Painters and Allied Trades	X		undated

\*Sarah Allen, SPO changed her vote from "repeal" to "no change" by email to Eric Nishimoto, dated 1/18/15 and stated at the 1/20/15 Task Force meeting.

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**GCA of Hawaii**

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

September 23, 2014

Sent Via E-mail: [robvyn.lk.pfahl@hawaii.gov](mailto:robvyn.lk.pfahl@hawaii.gov)

Ms. Sarah Allen  
State Procurement Chief  
State of Hawaii Procurement Office  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

**RE: SPO Past Performance Survey & HCR 176 (2014)**

Dear Ms. Allen,

Thank you for this opportunity to comment on the State Procurement Office's (SPO) Past Performance Survey (Survey) in response to House Concurrent Resolution 176 (2014) requesting SPO to conduct a study on the consideration of past performance in the awarding of low bid contracts for public works projects. 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.

During the 2014 legislative session GCA requested deferral of HCR 176 because it was premature as the Procurement Task Force was created during the 2013 session and was scheduled to report to the 2015 Legislature on issues related to bad performing contractors. Furthermore, consideration of past performance in procurement is already permitted under 103D-302(f) under the invitation for bid process, what is commonly known as low bid, however for various reasons agencies choose not to use it. Under Section 103D-302(f), HRS an invitation for bid may set the requirements to determine qualifications and criteria for a project. In other words, the agency may set the criteria and qualifications for the bidder in its bid specifications, which could include such criteria as past performance, recent project history and any other qualifications an agency may find necessary.

**GCA's Position on Past Performance in IFB ("low bid") contracts**

While GCA understands that SPO's Survey and HCR 176 (2014) was initiated due to concern that some contractors qualifying for public work projects were poorly performing, GCA believes that mandating the use of past performance criteria in low bid public work contracts is not the solution to eliminating bad performing contractors. **The consideration of past performance for low bid contracts raises a number of concerns for GCA, including but not limited to; ensuring objective administration and evaluation processes for agencies in determining qualified past performance criteria; inability for a new contractor to bid public work due to lack of past performance qualifications; agency's lack of resources, including staff and funding for implementation and administration of past performance for low bid contracts;**

**procedural due process concerns and appeal procedures; and ensuring efficiency, integrity and transparency in the procurement process of public works construction projects.**

### **Hawaii's Procurement Code**

Hawaii's procurement code was initially adopted in 1993 as Act 8, during the Special Session of the Hawaii State Legislature in response to an outdated procurement code, Hawaii's Procurement Code is based on the framework provided by the predecessor of the American Bar Association's *The 2000 Model Procurement Code for State and Local Governments*, (ABA Model Procurement Code) and was enacted to increase competition, ensure fairness, and establish greater uniformity in the purchase of goods and services by the State and counties.<sup>1</sup>

In 1993 the legislature made its intent regarding the procurement code clear and said, it is the policy of the State to foster broad-based competition. Full and open competition shall be encouraged. With competition, the State and counties will benefit economically with lowered costs. Therefore, it is the legislature's intent to maintain the integrity of the competitive bidding and contracting process by discouraging the State and counties from making changes to contracts once the contracts are awarded. Act of October 4, 1993, No. 8, A Bill for an Act Relating to Procurement. §1 (1993)

In Section 3-201, Commentary Number 3 of the ABA Model Procurement Code, which Hawaii's HRS Section 103D-301 is modeled after, it captures the essence of the proper Methods of Source Selection and how an agency should be permitted to exercise adequate authority to conduct procurement transactions in a fair and open competition under varying market conditions , it says,

[f]air and open competition is a basic tenet of public procurement. Such competition reduces the opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically. Since the marketplace is different for various supplies, services, and construction, this Code authorizes a variety of source selection techniques designed to provide for the best competition for all types of procurements. It also permits less formal competitive procedures where the amount of the contract does not warrant the expense and time otherwise involved . . .”  
THE 2000 MODEL PROCUREMENT CODE FOR STATE AND LOCAL GOVERNMENTS, §3-201, p. 22

In order to allow state and county agencies more flexibility in considering past performance, GCA supported the passage of Act 239 (S.L.H. 2013) which conformed to the ABA Model Procurement Code in “providing that the use of competitive sealed bids is [as] just one of several different methods of source selection, rather than the default method.” H.B. 1374, CD1 CONF. COMM. REP. NO. 175, 26<sup>th</sup> Sess. (Haw. April 26, 2013). Prior to adoption of Act 239, agencies felt as though they were obligated to use the low bid process under Section 103D-302 unless it could be “determined to be either not practicable or not advantageous to the State to procure by

---

<sup>1</sup> Marion Higa, State of Hawaii Auditor, *An Audit of Hawaii's Implementation of the New Procurement Law*, Report No. 95-8 (February 1995).

competitive sealed bidding.” TESTIMONY OF STATE OF HAWAII DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES TO SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS AND HOUSING, February 25, 2013. Due to the adoption of Act 239 (S.L.H. 2013) agencies may identify particular projects that may bid with other criteria, including past performance, rather than just solely based on the low bid. However, the procurement code is set up to allow the agency the flexibility to determine the proper criteria set forth in the bidding procedure and ensure transparency and efficiency in the delivery of a publicly funded project.

**GCA's Response to Survey**

Upon review of SPO's Survey, the GCA was concerned about how some of the questions were worded, as they may not reflect the real views of the respondent. For example, question number five asks when one believes past performance should be evaluated in the IFB process. Selections (d) and (e) are puzzling as doing a past performance evaluation makes little sense after an award is made and after a contract is completed. Question Number six, that asks how far back past performance should be considered, depends highly on what kind of past performance is being requested. GCA's concern is that too often, contracting agencies require past performance too specialized for local contractors to compete when the particular solicitation does not require the sophistication being asked. Unsophisticated supporting structures or infrastructure for something like rail come to mind if experience in building rail is a past performance criterion. Also, requiring past performance in a relatively unsophisticated type of structure in a recent past may limit highly qualified contractors who are well qualified to do the work but did not do such a project in the recent past.

GCA would like to suggest that some discussion take place within the report regarding the survey questions and responses that may address any shortcomings that may not be apparent from reading the raw survey responses. Furthermore, GCA would prefer that the draft report be circulated among stakeholders prior to final submission to the legislature to allow interested stakeholders an opportunity to comment on items that may mislead members of the legislature.

Thank you for the opportunity to respond to the Survey and for considering our items of concern.

With best regards,



Peter Landry, CHST  
Chair, Legislative Committee



## PAST PERFORMANCE SURVEY

**1. What role(s) have you held with regard to invitations for bids (IFBs) issued by a government entity? \*(Check all that apply)**

- a) General Contractor
- b) Subcontractor
- c) Employee of a vendor
- d) Government Employee
- e) Procurement Specialist
- f) Legislator
- g) Attorney
- h) Procurement Policy Advocate
- i) Concerned Taxpayer
- j) Other:

**2. What types of IFB contracts have you worked with? \*(Check all that apply)**

- a) Goods
- b) Services
- c) Construction
- d) N/A

**3. What size contracts have you worked with? \*(Check all that apply)**

- a) None
- b) \$1- \$2,500
- c) \$2,501 - \$15,000
- d) \$15,001 - \$100,000
- e) \$100,001 - \$250,000
- f) \$250,001 - \$1,000,000
- g) > \$1,000,000

**4. When the competitive sealed bid (IFB) is used to procure for goods, services or construction, do you think past performance should be an evaluation factor? \***

- a) Always
- b) Sometimes
- c) Never
- d) Other:

**5. When do you think past performance should be evaluated in the IFB process?**

- a) As soon as offerors submit their bids
- b) At source selection - For the lowest bid only
- c) At source selection - For the lowest three bids
- d) At award of contract to lowest bid
- e) At contract closeout
- f) Other:

**6. How far in the past should a vendor's relevant past performance be considered when evaluating offers in response to an IFB?**

- a) NOT ever
- b) 1 year
- c) 3 years
- d) 5 years
- e) 10 years

## PAST PERFORMANCE SURVEY

f) Forever

**7. Do you have any recommendations for how to incorporate past performance in bidder evaluation of IFBs? (open ended)**

**8. Should past performance be considered in determining whether a bidder has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance?**

- a) Absolutely
- b) Maybe
- c) Never

**9. What performance criteria do you think would be important for performance metrics? (Check all that apply)**

- a) Cost (unjustified or multiple cost overruns, justified or minimal cost overruns, no overruns or cost savings)
- b) Time (unjustified delays, justified delays, deadlines met or early)
- c) Modifications (excessive, justifiable, or none)
- d) Quality (inadequate, adequate, exceptional)
- e) Other:

**10. How do you think past performance should be reported? (Check all that apply)**

- a) Through an internal state database
- b) On paper files only
- c) Through objective evaluation criteria with contract recency and relevancy noted
- d) With subjective notations
- e) As a matter of vendor compliance (reported through Hawaii Compliance Express)
- f) Through three references supplied by the offer
- g) Other:

**11. How do you perceive past performance? (Check all that apply)**

- a) A major problem with poor past performers abusing the low-bid IFB system
- b) Dismissive to vendors with high-quality procurement performance
- c) Not an issue that should be addressed in IFBs
- d) Good information that should be shared with other procuring departments
- e) Important to consider when awarding taxpayer funded contracts
- f) Other:

**12. What are your concerns with incorporating past performance into all public contracting award processes? (open ended)**

**13. Any additional comments you would like to share with SPO? (open ended)**



**International Union of Painters and Allied Trades  
District Council 50**

**Position Statement By District Council 50**

The International Union of Painters and Allied Trades, District Council 50 ("DC50") thanks the State Procurement Task Force for this opportunity to present its position on the following two issues examined by the Task Force.

**Apprenticeship Program Preference**

With respect to the apprenticeship preference (Hawaii Revised Statutes §103-55.6, also referred to by Task Force members as "Act 17"), DC50 believes that one of the greatest concerns raised in the discussion of the issue - that the law has been ineffective at increasing membership - reflects a problem with the wording of the law. Many of the agencies participating in the Task Force indicated that they apply the apprenticeship preference only to "bidders" due to the use of that term in the statute. Since a "bidder" on a public procurement contract is almost always a general contractor, the preference is being applied to general contractors not subcontractors. Yet there are far more subcontractors working on public construction projects than general contractors. DC50 believes that there would be a considerable increase in the membership of the apprenticeable trades if the law were applied to subcontractors as well as general contractors. Instead of repealing HRS §103-55.6, DC50 thus favors amending it to ensure that subcontractors may also receive the apprenticeship preference.

**Identification of "Bad" Contractors/Past Performance**

Generally, DC50 supports the amendment of the procurement code to require investigation and consideration of a General Contractor/Sub-Contractor's past performance as a part of that contractor's responsibility determination. This is particularly so with respect to General Contractor/Sub-Contractors who have been debarred and/or fined for safety and/or other violations in other states or on federal government contracts. Although such a requirement may result in increased work for the procurement agency, DC50 believes that this concern is outweighed by competing concerns over public safety and the public interest in ensuring that only responsible contractors are utilized on public construction projects.

Thank you for the opportunity to voice our position on these matters.

Sincerely,

Joseph Gonsalves  
Director of Organizing