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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
FINANCE

March 31, 2017, 3:00 PM

SENATE BILL 1068, SD1, HD1
RELATING TO PROCUREMENT

Chair Luke, Vice-Chair Cullen, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 1068 SD1 HD1.

The SPO **opposes** this bill.

- A. Section 2, Page 3, Line 2 through 7 states that state procurement personnel may not disqualify or reject licenses due to lapse in continuous insurance and bond coverages.

This is duplicative statute that is already handled in HRS 444 for Contractors and its corresponding Rules. Specific statute for licenses should remain in the statute of its origin. Repeating this code in the Procurement code dilutes the Procurement Code and creates multiple areas to refer to which causes confusion.

HAR, Title 16 for Department of Commerce and Consumer Affairs, Chapter 77, Subchapter 10 title: Suspension, Revocation, Dissociation, Dissolution: Alternatives in lieu of revocation or suspension; states in HAR 16-77-63(b): "(b) To reinstate a license which was under suspension, the licensee may, in addition to meeting any conditions imposed for reinstatement, be required to show proof of workers' compensation, liability, and property damage insurance, submit a current financial statement, credit report, tax clearance, and as added proof of financial integrity, a bond in an amount to be determined by the board.

In addition, the Contractor's Licensing Board (CLB) has a standing policy that a curable timeframe of 60 days is appropriated to the license, and the practice is that the State adheres and allows for this.

§444-11.1 Requirements to maintain license. (a) A licensed contractor shall have and maintain in full force and effect the following:

- (1) Workers' compensation insurance; unless the licensee is authorized to act as a self-insurer under chapter 386 or is excluded from the requirements of chapter 386;
 - (2) Liability insurance from an insurance company or agency for comprehensive personal injury and property damage liability; and
 - (3) Bond when required by the board, under section 444-16.5.
- (b) Failure, refusal, or neglect of any licensed contractor to maintain in full force and effect, the applicable workers' compensation insurance, liability insurance, or bond shall cause the automatic forfeiture of the license of the contractor effective as of the date of expiration or cancellation of the contractor's workers' compensation insurance, liability insurance, or bond.
- (c) The board shall not restore the forfeited license until satisfactory proof of continuous insurance and bond coverages is submitted to the board as required by this section.
- (d) Failure to restore a license within sixty days after the date of forfeiture shall result in the forfeiture of all fees and shall require the person to apply as a new applicant.
- (e) The board may assess a fee not to exceed \$1,000, impose a bond, or restrict the license as a condition for the restoration of a license forfeited pursuant to this section.
- (f) A licensee may, within sixty days after receipt of the notification of the forfeiture, request an administrative hearing to review the forfeiture pursuant to chapter 91.

- B. Section 2, Page 3, Line 8, (A) states a bid may not be disqualified or rejected if the subcontractor was previously licensed.

Procurement Officers who access the CLB database see a snapshot of the licensing status for that day and cannot tell from the information given whether this subcontractor was previously licensed for a day before or a year before. Thus, access to this information is not readily available to the procurement workforce.

- C. Section 2, Page 3, Line 11, (B) states prior to award subcontractors submits proof of continuous insurance and bond coverages.

The government does not have privity with a prime contractor's subcontractors. Any submission by the prime contractor of a subcontractor with a 'forfeited' license should include proof of continuous insurance and bond coverages AT time of bid. It is the responsibility of the prime contractor to submit responsible, licensed subcontractors on its bid proposal. The Government should not be communicating at all with a prime's subcontractors at the bid evaluation stage.

- D. Section 2, Page 3, line 16, (C) states a repeat of what has been already covered in Section A shown above. Again, based on the already existing statute in HRS 444, the State can allow for this. In addition, the issue with stating, “sixty days following the opening of the bids” means that the subcontractor may only receive full standing on their license AFTER award of contract, which may happen quicker than this sixty days, thus reverting back to the same argument that we, as government spending tax-payer’s monies are now awarding contracts to contractors who are not licensed.
- E. Section 2, page 3, line 16, (2) states the Procurement Officer shall report any unlicensed activity to the CLB.

What is the definition of unlicensed activity and what is the scope of ‘any’ mean? In addition, through what mechanism would this report be made? This is a mandate that is too large and will be highly time-consuming to the Procurement workforce who are already under the gun to award in a timely manner. The Regulated Industries Complaints Office (RICO) already has this responsibility as their focal mission: “The Regulated Industries Complaints Office (RICO) investigates allegations of professional misconduct by licensees and unlicensed activity that may be occurring in the State.”

Having the procurement officer report any unlicensed activity to the licensing board is not, and cannot be within the scope of a procurement officer’s responsibility. Their job is to police their procurement, not investigate and report unlicensed activity of sub-contractors, with whom the procurement officer has no legal relationship or privity, to another department.

Government Burden and Contractor Responsibility: The SPO is concerned that this action will add more burden to the procurement specialist and transfer the prime contractor’s responsibility to be accountable for proposing licensed subcontractors. The process of checking to see if all subcontractors are licensed could delay a project if the listed subcontractors were unable to become compliant between bid opening and award. This would mean that the procurement specialist would now have to evaluate the 2nd low bidder’s subcontractors for compliance. Would the second contractor then have the same time allowances as the first? And so on and so on..

Defining ‘Time of Award’ in respect of the intent of this bill: There can be a range of lag time (typically 3 days to 90 days), between time of bid submittal to time of award. When is the license confirmed? Does the Procurement Specialist have to scan all licenses the night before? The day of? What about all the routings it needs before it's officially awarded? Do we scan before the AG reviews the award for form and function? Or after? It may become an issue of daily reviews until award? What if the award takes six months plus to be effected? In addition, the TWO timing requirements of ten days and sixty days has the Procurement Officer checking and rechecking licensing multiple times during any one procurement: at a minimum, at bid opening, at ten days, and at sixty days. Multiply this requirement by the subcontractors on the

proposal which can be a large amount depending on the procurement, and you will have increased the burden on the Procurement staff, increased the time taken to award the procurement, delaying the performance.

Exemption from Ch 444: During Legislative Session 2016, the Regulated Industries Complaints Office (RICO), suggested that procurement specialists might be found to be 'aiding and abetting' prime contractors who submitted unlicensed subcontractors. Thus, verbiage that waives procurement specialists from this requirement is recommended. Allowing for licenses to be valid at time of bid will require a clear and express legislative exemption from the HRS Ch 444 interpretation that licensing must be in place at the time of submission of proposal.

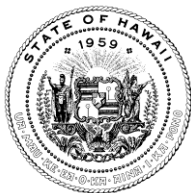
Responsibility: The basis of award is based on responsiveness of the award and responsibility of the applicant. HRS 103D-104 states:

"Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance."

It is the responsibility of the contractor to ensure their sub-contractors are properly licensed for the appropriate specialties. It is the responsibility of sub-contractors to maintain their licensing, insurance and bonding. It is the responsibility of the procurement officer to ensure the solicitation is open, fair transparent and awarded to the most responsive, responsible vendor at a fair and reasonable price pursuant to the criteria in the solicitation.

Instead of trying to change procurement to mitigate a confusing and complex licensing system, it is more productive to look at the source of the confusion and complexity, that is, the complex and confusing licensing system of construction specialties.

Thank you.



DAVID Y. IGE
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SHAN S. TSUTSUI
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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE
ON
FINANCE

TWENTY-NINTH STATE LEGISLATURE
REGULAR SESSION, 2017

FRIDAY, MARCH 31, 2017
3:00 P.M.

TESTIMONY ON SENATE BILL NO. 1068 S.D.1 H.D.1
RELATING TO PROCUREMENT

TO THE HONORABLE SYLVIA LUKE, CHAIR,
AND TO THE HONORABLE TY J.K. CULLEN, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 1068 S.D.1 H.D.1, Relating to Procurement. My name is Daria Loy-Goto and I am the Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers comments on this bill.

Senate Bill No. 1068 S.D.1 H.D.1 provides that a procurement officer who determines that a listed subcontractor's license is not valid at the time of bid due to a lapse in continuous insurance and bond coverage may not disqualify or reject the

bid if certain conditions are met. The measure also requires a procurement officer to report any unlicensed activity to the Contractors License Board ("Board") when a bid is disqualified or rejected because the specific conditions are not met.

RICO notes that allowing procurement officers to consider a subcontractor's license as valid at bidding only in the limited circumstance where a license has lapsed due to a loss of insurance or bond coverage, provided the license is current at the time work starts, is consistent with Board policy. As the enforcement arm for the Board, RICO believes that requiring procurement officers to report to the Board any unlicensed activity will promote investigation and prosecution of unlicensed activity.

Thank you for the opportunity to testify on Senate Bill No. 1068 S.D.1 H.D.1. I will be happy to answer any questions the Committee may have.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 31, 2017

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE TY CULLEN, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: **SUPPORT OF S.B. 1068, SD1, HD1, RELATING TO PROCUREMENT.**

Prohibits the disqualification or rejection of a bid that includes a listed subcontractor whose license is not valid at the time of the bid due to a lapse in continuous insurance and bond coverages if the subcontractor meets certain conditions. Requires procurement officers to report any unlicensed activity if a bid is disqualified or rejected because the subcontractor fails to meet certain licensing requirements. (SB1068 HD1)

HEARING

DATE: March 31, 2017
TIME: 3:00 p.m.
PLACE: Capitol Room 309

Dear Chair Luke, Vice Chair Cullen, and Members of the Committee,

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

GCA **supports** S.B. 1068, SD1, HD1, Relating to Procurement, which proposes to amend Section 103D-302(g) allowing the procurement officer the ability to determine whether a listed subcontractor's license is not the cause for the disqualification of a bid. This bill proposes to prevent a bid from being thrown out for reasons related to a listed subcontractor's status based on compliance with workers compensation or bonding requirements, if any. While the added provisions in the HD1 draft regarding number of days are a bit cumbersome, we appreciate the Committee passing this measure to allow parties to further review the measure to find reasonable number of days, if any, are appropriate.

This measure would still require that all listed subcontractors be properly licensed at time of award and throughout the project. Further this measure would preclude a prime bidder from being penalized and found non-responsive because its subcontractor may have had an issue with their compliance under Chapter 444, HRS regarding requirements of workers compensation, insurance, and bond if they are able to confirm continuous coverage between bid time and award of the project. While GCA would prefer that the bill address a Responsible Managing Employee's (RME) license status that could be in question due to unexpected death or dissociation of an RME, we understand that some from the industry has concerns about affecting that provision of Chapter 444.

For these reasons, we respectfully request that you pass HB 1068, HD1, SD1 to increase efficiency in the procurement of public works construction. Thank you for your consideration.

SAH - Subcontractors Association of Hawaii

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March 31, 2017

Testimony To: House Committee on Finance
Representative Sylvia Luke, Chair

Presented By: Tim Lyons, President

Subject: S.B. 1068, SD 1, HD 1 - RELATING TO PROCUREMENT

Chair Luke and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and have comments on this bill. The SAH represents the following nine separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

At the outset, we would like to thank the Committee for working with us in developing language which is relatively acceptable as it reads in HD 1. We think that the time limitations imposed by HD 1 are absolutely necessary in order to limit any game playing that might occur between general contractors and subcontractors.

As to (g)(2), requiring the Procurement Officer to report unlicensed activity, we defer to the Procurement Office however our feeling is that they already have a fairly heavy workload and imposing this additional duty on them is probably not wise.

Thank you.



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GREGG S. SERIKAKU
EXECUTIVE DIRECTOR

Via Email

March 29, 2017

Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice-Chair
House of Representatives Committee on Finance
The Twenty-Ninth Legislature, Regular Session of 2017
Chair Luke, Vice Chair Cullen, and Members of the Committee:

SUBJECT: SB1068 SD1 HD1 Relating to Procurement

My name is Gregg Serikaku. I am the Executive Director of the Plumbing and Mechanical Contractors Association of Hawaii. The Association for which I speak would supports the amendments made in SB1068 SD1 HD1.

- Section 2(g)(1)(A) was amended as follows:

(A) The subcontractor was previously licensed under chapter 444 **within 60 days** prior to the time of bid;

A fixed limit of 60 days would ease the burden on the procurement officers and the licensing division personnel of having to research the validity of older licenses that are in excess of 60 days.

- Section 2(g)(1)(B) was amended as follows:

(B) **Within 10 days following the opening of bids**, the subcontractor submits satisfactory proof of continuous insurance and bond coverages under section 444-11.1 to the contractors license board; and

A 10 day period after the opening of bids is more than sufficient time to allow a listed subcontractor provide satisfactory proof of continuous insurance and bond coverage.

- Section 2(g)(1)(C) should be amended as follows:

(C) **Within 60 days following the opening of bids**, the subcontractor has its license under chapter 444 restored to a continuous current and active status from at least the time of bid to the time of award; and

A diligent and responsible contractor should be able to restore its license within 60 days after bid opening.

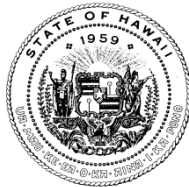
Each of these changes will help to expedite the procurement process and the timely award of projects by minimizing unnecessary delays

Thank you for the opportunity to submit our suggested changes.

Respectfully yours,

A handwritten signature in black ink that reads "Gregg S. Serikaku".

Gregg S. Serikaku
Executive Director



Testimony by:
FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

LATE

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

March 31, 2017
3:00 p.m.
State Capitol, Room 308

S.B.1068 S.D.1, H.D. 1
RELATING TO PROCUREMENT

House Committee on Finance

The Department of Transportation (DOT) provides the following **comments** to the proposed bill which proposes to exempt rejection of a bid that includes a listed subcontractor whose license is not valid at the time of the bid due to a lapse in continuous insurance and bond coverages if the subcontractor meets certain conditions. Requires procurement officers to report any unlicensed activity at the time of the bid to the contractors license board.

The DOT comments that the following proposed language to be deleted: Line 18 thru line 20, "[t]he procurement officer shall report any unlicensed activity at the time of the bid to the contractors license board."

The required responsibility to report unlicensed activity at bid time should not fall on the procuring agency.

Thank you for the opportunity to provide testimony.

March 31, 2017

Sylvia Luke, Chair
Committee on Finance
House of Representatives
State Capitol
Honolulu, Hawai'i 96813

Re: SB1068 – Relating to Procurement

Aloha Chair Sylvia Luke and Members:

We do **NOT SUPPORT** the bill.

SB 1068, SD1HD1 prohibits the disqualification or rejection of a bid that includes a listed subcontractor whose license is not valid at the time of the bid due to a lapse in continuous insurance and bond coverages if the subcontractor meets certain conditions and requires procurement officers to report any unlicensed activity if a bid is disqualified or rejected because the subcontractor fails to meet certain licensing requirements.

This bill is asking for major coordination between the *many state procurement specialists* and the Contractors License Board (CLB). Currently, *there is no streamlined way* in which: (1) a state procurement specialist can determine if a subcontractor was previously licensed under chapter 444, (2) to confirm satisfactory proof from the CLB about continuous insurance and bond coverages, and (3) to determine if a subcontractor's license is continuous, current, and active status from at least the time of a bid to the time of award. The CLB only meets once every month and official minutes of the board often times takes more than thirty (30) days to post after the meeting. At what point is the state procurement specialist able to act on what is required of them? Waiting for official board minutes? Waiting for a certified correspondence from the executive staff of the CLB? Waiting for a new online database system that is updated to provide such information? Thus, this bill *could delay the procurement process by months if not years*, for a subcontractor that has not followed the currently established rules of being prepared before bid submission.

Finally, the subcontractor listing has not been a significant problem in the awards of contracts where a low bidder is displaced due to an error or omission – only approximately one percent of construction projects awarded were affected in fiscal years 2013 and 2014 (State Procurement Task force report, February 3, 2016).

Mahalo.