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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

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February 6, 2018

TO: HONORABLE DONNA MERCADO KIM, CHAIR, HONORABLE
RUSSELL RUDERMAN, VICE CHAIR AND MEMBERS OF THE
SENATE COMMITTEE ON GOVERNMENT OPERATIONS

HONORABLE JILL TOKUDA, CHAIR, HONORABLE J. KALANI
ENGLISH, VICE CHAIR AND MEMBERS OF THE SENATE
COMMITTEE ON LABOR

SUBJECT: **OPPOSITION TO S.B. 3014 RELATING TO PROCUREMENT.** Clarifies
requirements for public works projects for a bidder who is a party to an
apprenticeship agreement.

HEARING

DATE: February 6, 2018
TIME: 2:50 P.M.
PLACE: Conference Room 309

Dear Chair Kim and Chair Tokuda, Vice Chair Ruderman and Vice Chair English and
Members of the Committees,

The General Contractors Association (GCA) is an organization comprised of over 500
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 is in opposition to S.B. 3014, Relating to Procurement because it proposes an
amendment that would invite more bid protests with the requirement of bidder providing
proof of being party to a registered apprenticeship agreement for each type of
classification that bidder would list on payroll affidavits to construct public works. The
amendment proposed in S.B. 3014 is not practical since bidder is often receiving
subcontractor bids minutes before bids are due and the proposed requirement under S.B.
3014 for proof of registered apprenticeship agreement would create an administrative
nightmare just minutes before a bid is tendered. The chaos that S.B. 3014 would cause a
bidder will only result in more bid protests when the apparent low bidder is protested and
then denied the 5% discount on the grounds that their bid was defective due to an error or
omission relating to inclusion of proof of being a party to a registered apprenticeship
agreement. This measure is a flawed attempt to fix Section 103-55.6 of the Hawaii
Revised Statutes, commonly known as "Act 17" (Act 17).

Proposed Amendment will make implementation more Difficult

Currently bidders are only required to submit forms for trades they use on the project that they “directly” employ. S.B. 3014 would require the bidder to submit a form for “each type of classification that the bidder will list on the certified payroll affidavit.” This proposed change would change the use of the apprenticeship program quite significantly as it would require collection of forms from every trade on the job – some departments require an originally submitted documents which must be obtained from the state approved apprenticeship program. While the intent of this legislation appears to improve reporting requirements and enable special interest parties to verify who is working on a public works project – this is the wrong approach – and will result in increased bid protests, delays in awarding contracts and, in the end, increased costs. S.B. 3014 will lead to significant unintended consequences in the bid submission process and overall procurement that would be obstructive.

Background

Under current law, 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 state. This measure was passed in 2009 and has been the cause of bid protests since its inception. The original intent of Act 17 was to incentivize the use of apprenticeship programs certified by the State to ensure a highly trained workforce. However, the implementation of Act 17 has caused problems regarding how each agency accounts for a prime bidder’s participation in an apprenticeship program.

Pursuant to Senate Concurrent Resolution 92, Senate Draft 2 of the 2013 Regular Session a Task Force was formed to study procurement in public works construction and how to increase its efficiency. The Task Force included all major departments that procured public works construction projects and private sector representatives. One area studied was Act 17 (2009) and the bid preference it permits. The Task Force identified inconsistencies in the application of the preference between agencies which have caused confusion and concern on part of the contractors. A Comptroller’s Memorandum following the law’s passage provided some guidance and has been used by bidders that choose to utilize the apprenticeship preference.

In August 2014, **upon a vote by the Task Force regarding whether Act 17 should be repealed – a majority voted to repeal Act 17. The 2013 Procurement Task Force recommended a complete repeal of Act 17 and the Apprenticeship Preference.** See attached Vote Tally Form of vote taken on August 8, 2014. This proposed measure would not resolve the areas of inconsistencies, and could instead make it more complex to administer, monitor and execute. The Task Force concluded that

Task Force members were in general agreement that there is no evidence that the intent and purpose of the law has been effective in increasing the usage of apprenticeship programs. The Department of Labor and Industrial Relations did not notice a significant difference in the usage of 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. See Procurement Task Force Report to be provided upon request.

For these reasons we request this measure be deferred. Thank you for the opportunity to share our opposition to S.B. 3014.

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
Kika G. Bukoski	Hawaii Building & Constr. Trade Council (HBCTC)	Constr. Industry	X		X			X			X		
Peter Lee	Hawaii Construction Alliance	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.