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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
LABOR AND PUBLIC EMPLOYMENT
February 4, 2020, 9:10 a.m.

HB2019
RELATING TO THE PROCUREMENT CODE

Chair Johanson, Vice-Chair Eli, and members of the committee, thank you for the opportunity to submit testimony on HB2019. The State Procurement Office's (SPO) appreciates the intent of the bill to protect the State against construction defects after the completion of the contract.

SPO provides the following comments and recommendations:

Comments: Requiring a post-performance bond might stifle competition and therefore increase overall costs. Based on our research and discussions with Department of Accounting and General Services (DAGS)-PWD and DAGS Risk Insurance Division, these are the observations:

- A post-performance bond may be burdensome to a contractor, particularly small businesses and new entrants.
- It is expensive to carry a bond for the entire cost of the contract for 10 years after completion.
- A ten-year bond for 100% of the project may constrain the contractor's bonding capacity, which could affect their ability to bid on future work.
- A post-performance bond requirement would result in increased costs to the state, with no guarantee of cost savings in the long run.

Recommendations: SPO defers to DAGS-PWD and DAGS Risk Insurance Division for their recommendations that could include any of the following:

- Require contractors to maintain their insurance on a project for a specific number of years after completion based on the overall cost and complexity of the project, to cover components as workmanship, materials, and equipment.
- Require agencies to include extended warranties and latent defects provisions in the contract.
- State buy a policy of its own to cover all contractors associated with the project, instead of paying for the contractor's insurance.

Thank you.

IRONWORKERS STABILIZATION FUND

February 3, 2020

Aaron Johanson, Chair
Committee on Labor and Public Employment
House of Representative
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Dear Honorable Chair Johanson and Members of the Committee on Labor and Public Employment:

Re: Opposition for HB 2019 – Relating to Procurement Code

We are in opposition of HB 2019, Relating to Procurement Code.

First, it should be recognized that this bill will hold a bond for 10 years after a project is completed. We understand the need to ensure the State of Hawaii has the ability to cure construction defects, however; this is unneeded since there are remedies already available.

Additionally, any bonds that are held for that period of time will limit the amount of funds a company can use for new projects. This in turn will slow down construction in Hawaii and affect the lives of the hard working men and women of this State.

Our union alone has over 100 “mom and pop” specialty contractors who may be affected by this bill. We believe that this bill is unnecessary and will create additional burdens to the companies we represent. As such, we feel this additional constraint may force some of the smaller firms with smaller funding streams to go out of business.

We ask you to defer this bill indefinitely, as it will lead to the slow down and possible closures of smaller business. Thank you for your consideration on this matter.

February 4, 2020

House Labor and Public Employment Committee
Hawaii State Capitol
415 S. Beretania Street
Conference Room 309
Honolulu, Hawaii 96813

Delivered via email to: repjohanson@Capitol.hawaii.gov, repeli@Capitol.hawaii.gov

Re: Concerns with HB. 2019, introduced by Representative Scot Matayoshi

Dear Chair Johanson and Vice Chair Eli,

My name is John Bustard, I am Senior Vice President at King & Neel, LLC, a Hawaii based insurance and bonding agency representing numerous general contractors and subcontractors participating on state public and private construction contracts over the past 53 years. I am also the current president of the National Association of Surety Bond Producers (NASBP), a national trade organization of professional surety bond producers, whose membership includes firms specializing in surety bonds for construction projects by arranging bid, performance, and payment bonds in Hawaii and throughout the U.S.

I am contacting you regarding concerns with House Bill 2019 introduced by Representative Scot Matayoshi. As introduced, HB 2019 would amend Hawaii's Little Miller Act (HRS §103D-324) to add the term "post-performance bond" requiring general contractors to provide a post-performance bond to cover the state's costs of curing construction defects discovered within 10 years after the contract's completion. The bond would be in the amount of 100% of the contract price, and prior to the contract's completion, the contractor would be required to provide proof satisfactory to the purchasing agency that the bond is paid in full for the 10 years following the contract's completion.

As introduced, HB2019 contemplates a bond product that does not exist in the current surety marketplace. A "post performance bond" appears to be similar to a warranty bond, but with an overly lengthy 10-year commitment by the surety. Lengthy warranty periods exceeding one or two years are problematic. Lengthy warranty periods have the effect of preventing the availability for bonds, thus blocking open competition, something that would be unfavorable for publicly funded projects in Hawaii.

I am available to meet with you to discuss HB 2019 in person.

Thank you for your consideration of these concerns.

Sincerely,

John Bustard
Senior Vice President
King & Neel