

S.B. NO. 3035

JAN 26 2022

A BILL FOR AN ACT

RELATING TO THE APPRENTICESHIP AGREEMENT PREFERENCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 103-55.6, Hawaii Revised Statutes, is
2 repealed.

3 ["~~§103-55.6~~ ~~Public works construction; apprenticeship~~
4 ~~agreement.~~ (a) ~~A governmental body, as defined in section~~
5 ~~103D-104, that enters into a public works contract under this~~
6 ~~chapter having an estimated value of not less than \$250,000,~~
7 ~~shall decrease the bid amount of a bidder by five per cent if~~
8 ~~the bidder is a party to an apprenticeship agreement registered~~
9 ~~with the department of labor and industrial relations for each~~
10 ~~apprenticeable trade the bidder will employ to construct the~~
11 ~~public works, and in conformance with chapter 372. The lowest~~
12 ~~total bid, taking the preference into consideration, shall be~~
13 ~~awarded the contract unless the solicitation provides for~~
14 ~~additional award criteria. The contract amount awarded,~~
15 ~~however, shall be the amount of the price offered, exclusive of~~
16 ~~the preference.~~

17 ~~(b) For purposes of subsection (a), in determining whether~~
18 ~~there is conformance with chapter 372, the procurement officer~~

1 ~~shall consider the actual number of apprentices enrolled in and~~
2 ~~the annual number of graduates of the apprenticeship program.~~

3 ~~(c) At the time of submission of a competitive sealed bid~~
4 ~~or a competitive sealed proposal by a bidder, the bidder shall~~
5 ~~furnish written proof of being a party to a registered~~
6 ~~apprenticeship agreement for each apprenticeable trade the~~
7 ~~bidder will employ to construct the public works and, if awarded~~
8 ~~the contract, shall continue to certify monthly in writing that~~
9 ~~the bidder is a party to a registered apprenticeship agreement~~
10 ~~for each apprenticeable trade the bidder will employ to~~
11 ~~construct the public works for the entire duration of the~~
12 ~~bidder's work on the project. This subsection shall be deemed~~
13 ~~to be incorporated into a public works contract. A bidder who~~
14 ~~is awarded a contract shall be subject to the following~~
15 ~~sanctions if, after commencement of work, the bidder at any time~~
16 ~~during the construction is no longer a party to a registered~~
17 ~~apprenticeship agreement for each apprenticeable trade the~~
18 ~~bidder will employ to construct the public works:~~

19 ~~(1) Temporary or permanent cessation of work on the~~
20 ~~project, without recourse to breach of contract claims~~
21 ~~by the bidder; provided that the governmental body~~

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1 ~~shall be entitled to restitution for nonperformance or~~
2 ~~liquidated damages, as appropriate, or~~

3 ~~(2) Proceedings to debar or suspend under section 103D~~
4 ~~702.~~

5 ~~(d) For purposes of this section, "bidder" means an entity~~
6 ~~that submits a competitive sealed bid under section 103D 302 or~~
7 ~~submits a competitive sealed proposal under section 103D 303."]~~

8 SECTION 2. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken.

13 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: *MUN. M.*

16

BY REQUEST

Report Title:

Apprenticeship Agreement Preference; procurement

Description:

Repeals the public works construction bid preference for parties to registered apprenticeship agreements provided by section 103-55.6, Hawaii Revised Statutes.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

SB. NO. 3035

DEPARTMENT: Accounting and General Services

TITLE: A BILL FOR AN ACT RELATING TO THE APPRENTICESHIP AGREEMENT PREFERENCE.

PURPOSE: To eliminate the Apprenticeship Agreement Preference in an effort to increase the economy, effectiveness, and impartiality of the public works construction procurement process.

MEANS: Repeal section 103-55.6, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Section 103-55.6, HRS, was intended to incentivize the use of state-certified apprenticeship programs by bidders to ensure a well-trained workforce for public works constructions. However, we are unaware of any statistical evidence that this statute has been responsible for increased enrollment or participation in apprenticeship programs. Instead, it has had a number of unintended consequences that are contrary to the Legislature's goal to increase the economy, efficiency and effectiveness, and impartiality of the public works construction procurement process.

The Apprenticeship Agreement preference has decreased the economy of the construction procurement process because it has required government agencies to reduce (for evaluation purposes) the bid price of qualified bidders by five percent. This has resulted in awards being made to bidders at increased costs of up to five percent, or as much as \$50,000 more for every \$1,000,000 of construction cost, whenever the preference has made a difference in the bid order, all in the absence of any evidence that the

State is obtaining a benefit that justifies the added cost.

The Apprenticeship Agreement Preference has also decreased the efficiency of the construction procurement process. It has prolonged the procurement process because it is often difficult for agencies to determine who qualifies for the preference. In accordance with Comptroller's Memorandum No. 2011-25, these determinations must be made on a project- and bid-specific basis. The difficulty of making these determinations is increased by the fact that much of the information needed to make them (i.e., information about multi-skilled workers a bidder intends to employ, the matter in which a bidder intends to accomplish certain components of work, etc.) is not readily available to procurement personnel based on the information contained in the bid packages. Procurement personnel also need to be knowledgeable about construction trade-work to make the determination.

Because agencies must make both project- and bid-specific determinations about which bidders qualify for the preference based on bidder-provided information that is often incomplete and therefore not transparent to all bidders, the impartiality of decisions made by procurement personnel with regard to application of the preference may be called into question, thereby damaging perceptions regarding the integrity of the procurement process.

To qualify for the preference, bidders must be party to a registered apprenticeship agreement for each apprenticeable trade the bidder will employ to construct the public works project. Due to the disparity between the number of state-certified apprenticeship programs sponsored by unions versus non-union sponsors (thirty-six union-sponsored apprenticeship programs versus five non-union-sponsored programs), the statute

appears to favor unionized contractors, because it is more likely that a unionized contractor can self-perform more work and qualify for the preference.

The apprenticeship agreement preference has also been the subject of a number of protests. Since procurement actions are statutorily stayed until resolution of the protest, bid protests involving application of the apprenticeship preference have delayed the procurement process.

Impact on the public: Removal of this preference would eliminate the potential increased cost for construction due to the preference, and it would increase transparency in the procurement of construction services.

Impact on the department and other agencies: Removing this preference from the procurement code would increase the efficiency and transparency of the bid evaluation process and eliminate the negative impacts created by this preference (including difference in interpretation between agencies, protests resulting from the preference, added costs of construction, etc.).

If the Department of Labor and Industrial Relations determines that there is a continued need to increase enrollment in apprenticeship programs, it will need to find alternative means that do not impact the procurement process to achieve that goal.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: AGS 221

OTHER AFFECTED

AGENCIES:

All state and county departments and agencies procuring construction services.

EFFECTIVE DATE:

Upon approval.