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LATE

TESTIMONY
OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE
ON
ECONOMIC DEVELOPMENT AND TECHNOLOGY
ON
March 8, 2010
H.B. 2133, H.D. 1

RELATING TO PROCUREMENT

Chair Fukunaga and members of the Committee, thank you for the opportunity to testify on H.B. 2133, H.D. 1.

The Department of Accounting and General Services (DAGS) has concerns about H.B. 2133, H.D.1 because imposing a strict 45 day interval for the time between a project being advertised and the time its contract is executed is not practical. The interval between a project being advertised and awarded is based on several considerations including the size and complexity of the project, as well as the source selection method that is used.

DAGS suggests that in a construction project subject to the procurement code, the basic intervals that need to be managed are project initiation, planning, design, bidding, and construction. These intervals need to be managed to optimize project objectives and

results. In parallel, site selection, environmental assessments, impact statements and approvals need to be secured, land use, special management area, conditional use, conservation district use, special, subdivision, height waiver, health, industrial, and building permits must be obtained.

Setting optimal intervals are project specific, but common intervals can be looked at. For projects solicited under Chapter 103D-302, one of these is the interval between the bid opening date and the award date (which should include certification). The other is the interval between the award date and the start of construction date.

For projects solicited under Chapter 103D-303, one key is the interval between the offer received and contract award date. The difference between 103D-302 and 103D-303 is that in 103D-302, the bid is against a design that has already been completed. In 103D-303, which for construction projects involves design and build under the same contract, the design starts after the award. In addition, the 103D-303 process allows for discussions and a “best and final” offer after the original offers are received. As a result, the interval between the bid received and contract date awarded for 103D-302 will be different from the interval between the offer received and contract awarded date under 103D-303. In addition there will be a large difference between contract award and start of construction under 103D-302 verses 103D-303.

My testimony is specific to construction projects and address what I believe to be the primary concern of the construction industry task force, which is moving projects through the procurement and contracting process into construction as quickly as practical. The source selection methods referred to in this bill apply to procurements of all goods, services and construction. Requirements that apply to construction should not be automatically applied to other procurements. With that in mind, DAGS suggests that this

bill may address the shortening of intervals for construction projects by directing the Procurement Policy Board to set optimum intervals for the following:

Advertising to bid open (103D-302) or offer received (103D-303)

Bid open or offer received to contract award (including certification) (The interval will be shorter for 103D-302 than for 103D-303)

Contract award to start of construction (The interval will be considerably shorter for 103D-302 than for 103D-303)

DAGS defers to the State Procurement Office on Section 2 of the bill. We believe that reseller agreements are allowed under the WSCA contract. These agreements should be between the vendors and their resellers, and not compelled by the State. The State does not become a party in contracts between a contractor and the contractor's subcontractor.

Thank you for the opportunity to testify on this matter.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

March 8, 2010

TO: THE HONORABLE SENATOR CAROL FUKUNAGA, CHAIR AND MEMBERS OF
THE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

SUBJECT: H.B. 2133, HD1 RELATING TO PROCUREMENT.

LATE

NOTICE OF HEARING

DATE: Monday, March 08, 2010
TIME: 1:15 p.m.
PLACE: Conference Room 016

Dear Chair and Members of the Committee:

The General Contractors Association (GCA), an organization comprised of over five hundred and seventy (570) general contractors, subcontractors, and construction related firms, offer the following comments on H.B. 2133, HD1, Relating to Procurement.

HD1 added Sections 2 and 3 concerning reseller agreements in cooperative multi-state contracting. The GCA has **no comment** on these sections of the bill.

HD1 also added Section 4 that changes HRS Section 103D-906 Preference for small businesses to give a 5% preference for Hawaii small businesses in lieu of a more comprehensive set-aside program for small businesses in general. Without the benefit of reasons and problems associated with the original wording of the law, the GCA would **oppose** such a change as it would add another burden on the already burdensome bid process subject to protest and questions on what constitutes a "Hawaii small business".

With respect to the HD1 changes to Section 1 of the bill, the GCA generally **supports the intent** of the bill to speed up the current procurement process affecting construction contracting. However, the GCA favors reducing the deadline for award after bid opening to 30 days (in lieu of 45 days) and making clear that the award would authorize the contractor to begin ordering materials to minimize the risks of volatile material price fluctuations after the fixed price bid proposal. The GCA also suggests the bill's effect should be limited to "low-bid" contracting process covered by HRS Section 103D-302 Competitive sealed bidding as evaluation of bids is generally a ministerial function and would not require extensive review by procurement officers. The GCA suggests deferring application to the other procurement sections (which may require more extensive/subjective reviews) pending experience with the new low-bid deadline.

Thank you for the opportunity to provide our views on this issue.

Written Statement of
MARK GILBERT
President
Commercial Data Systems, Inc.
Before the
THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY.
Monday, March 8, 2010
1:15 PM
State Capital, Conference Room 016

In consideration of
HB 2133 HD1 HAWAII BUSINESS CONCERNS

Chair Fukunaga, Vice Chair Baker, and Members of the Senate Committee on Economic Development and Technology.

Commercial Data Systems (CDS) supports the majority of HB 2133 that seeks to enhance Hawaii's struggling economy by proposing the following.

1. Part I, Contracts awards; contract formation.

CDS supports this in part but feels one additional criteria needs to be added.

Specifically, in awarding contracts to Hawaii businesses a minimum amount of fifteen days should be given to businesses to respond to initial request for proposals before the date when the proposal responses are due.

We suggest the following language be inserted as a new item (1), with subsequent items being numbered as (2) through (4).

(1) A minimum of fifteen days shall be given to businesses to respond to initial request for proposals;

We feel this additional requirement will allow maximum participation by a wide variety of Hawaii businesses as it will give enough time to find, understand, and respond to proposal requests. This will therefore allow for maximum competition, which will have the effect of lowering state procurement costs.

2. Part II, the authorization of reseller agreements as part of any multi-state contracting agreement.

CDS fully supports this revised statute.

In the past, CDS has successfully acted as a reseller agent under various WSCA contracts. The State Procurement Office (SPO) has recently changed their policy and no longer allow for local resellers to participate under the WSCA program. We actually feel the ability to work with local reseller agents is more important for the Hawaii marketplace than probably any other. Historically, large manufactures have been ill equipped to provide quality service in Hawaii. This is true both in terms of local pre- and post-sales support personnel, and also a general lack of understanding of the Ohana spirit that pervades the Hawaii marketplace. To properly support Hawaii, a firm must have a large and sustained local presence. We therefore believe strongly that the SPO should allow for local resellers to participate in multi-state contracting agreements.

3. Part III, Preference for Hawaii businesses.

CDS supports this in part but feels one change needs to be made.

We feel that all Hawaii businesses that have their principal office in the state and a minimum of 35% of its employees residing in the state should be eligible for the 5% preference. Limiting the preference program to only small businesses will discourage growth of those same Hawaii small businesses as they seek ways to remain 'small'.

The goal here should be to promote the growth of the entire Hawaii marketplace, including firms that grow to a size that might be considered a large business.

We propose that all instances of the word 'small' be removed from this section, and that the first sentence of sub-section (b) be replace with the following:

(b) As used in this section "Hawaii business" means a business having;

Thank you for the opportunity to submit testimony in support of HB 2133.