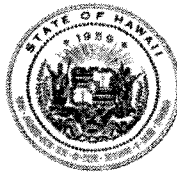


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GOVERNOR

AARON S. FUJIOKA
ADMINISTRATOR



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**TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE**

**TO THE
HOUSE COMMITTEE
ON
ECONOMIC REVITALIZATION, BUSINESS & MILITARY AFFAIRS**

February 4, 2010

8:00 a.m.

HB 2133

RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Choy, and committee members, thank you for the opportunity to testify on HB 2133.

This bill proposes that a contract will be effective once notice of award is made and the solicitation, offer, bid or proposal and the notice of award shall serve as the contract document. No other written document will be required.

This proposed bill treats all procurements equally, but they are not all the same. For example, for professional services contracts, while there is a solicitation, there is no offer only a statement of interest and qualifications, and the terms of the scope of work, agreement period, fee, etc. are not in writing until the negotiated written contract is completed.

For regular competitive sealed bidding and competitive sealed proposals without a separate written contract, there is no assurance that the parties are referring to the same documents and have a common understanding of what is in the contract. This may result in complications during the course of the performance of the contract when the parties viewing different documents have different expectations of their obligations and the obligations of the other party. There would be circumstances when it would be beneficial to the governmental body to have a separate written contract, for instance when there are numerous addenda and series of offers and a separate written contract would serve to confirm the agreement between the parties.

In instances where an alternative method of procurement is utilized as a result of a procurement conducted through competitive sealed bidding, competitive sealed proposals or professional services whereby negotiation would take place, the written contract would include what was agreed to. The written contract assures that both parties are in agreement as to what goods, services or construction will be provided at the agreed price and agreed terms and conditions. With all the changes that may occur during the procurement, this written contract confirms the parties' agreement.

The bill would work best for simple, straightforward competitive sealed bidding when the solicitation requires an all-in-one solicitation/offer form, that way the solicitation and offer are contained and referenced in the same document, and the notice of award serves as the government's acceptance of the offer.

The SPO does not support his bill because it would not be feasible for all methods of procurement, only as stated in the above paragraph for the simple straightforward competitive sealed bidding.

Thank you.



ELECTRICAL CONTRACTOR'S ASSOCIATION OF HAWAII

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February 2, 2010

To: The Honorable Representative Angus L.K. McKelvey, Chair
And the Members of the Committee on Economic Revitalization,
Business & Military Affairs

From: Al Itamoto, Executive Director
Electrical Contractors Association of Hawaii
National Electrical Contractors Association, Hawaii Chapter

Subject: HB 2133, Relating to Procurement

Notice of Hearing

Date: Tuesday, February 4, 2010
Time: 8:00 AM
Place: Conference Room 312
State Capitol
415 South Beretania Street

Dear Chair McKelvey and Committee members:

The Electrical Contractors Association of Hawaii (ECAH) is a non-profit association consisting of electrical contractors that are signatory to a collective bargaining agreement with IBEW Local Union 1186. ECAH **opposes** the intent and purpose of HB 2133 providing for the exclusion of a subsequent written and executed contract between the government body and the contractor. This Association is concerned with the legality of such decision and that it may not provide sufficient documentation of the terms and conditions of the contractual agreement between the parties.

There are particular language that may not be included in the consolidation of all of the pre-award and notice of award documents that would be necessary in the performance of the contract and any remedies that may be available to each party. Electrical contractors are sometimes joined by a sub-contract agreement to the awarded bidder. The sub-contract agreement references the original contract between the government body and the awarded bidder. It is in the best interest of both parties to execute a written contract once the awarding of the contract is made.

ECAH **opposes** the passage of HB 2133.

Thank you for the opportunity to provide testimony on this issue.