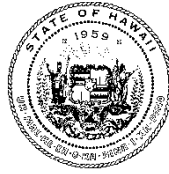


8DAVID Y. IGE
GOVERNOR



DOUGLAS MURDOCK
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
DOUGLAS MURDOCK, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
CONSUMER PROTECTION AND COMMERCE
ON
FEBRUARY 11, 2016

H.B. 2457, H.D. 1

RELATING TO PROCUREMENT

Chair McKelvey and members of the Committee, thank you for the opportunity to submit written testimony on H.B. 2457, H.D. 1.

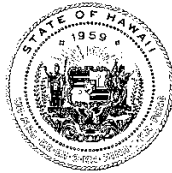
The Department of Accounting and General Services (DAGS) opposes Section 1 of this measure and offers the following comment:

We continue to oppose the change and based on the findings of the Procurement Task Force, with a vote of 10-2 (ten (10) to repeal, one (1) to modify, and one (1) for no change), we recommend repealing the apprenticeship credit in its entirety.

Thank you for the opportunity to submit written testimony on this matter.

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

LEONARD HOSHIJO
DEPUTY DIRECTOR

**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.labor.hawaii.gov
Phone: (808) 586-8844 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

February 11, 2016

To: The Honorable Angus McKelvey, Chair
The Honorable Justin H. Woodson, Vice Chair, and
Members of the House Committee on Consumer Protection & Commerce

Date: Thursday, February 11, 2016
Time: 5:00 p.m.
Place: Conference Room 325, State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 2457 HD1 Relating to Procurement

I. OVERVIEW OF PROPOSED LEGISLATION

HB 2457 HD1 proposes to add a new section to chapter 103, Hawaii Revised Statutes (HRS), to establish an earned credit certificate that contractors could use for a five percent bid preference by meeting certain apprenticeship requirements on a public works project. The contractor and subcontractors must maintain accurate records for a period of at least three years. The director may adopt rules pursuant to chapter 91, HRS, pertaining to the administration and enforcement of this section.

HB2457 also requires bidders on public works projects to list each type of classification they will use on the certified payroll as part of the bid offered to a contracting agency.

DLIR supports incentives for participation in apprenticeship programs and offers comments regarding the impact to the department below. DLIR notes that chapter 103, HRS, is under the jurisdiction of the Department of Accounting and General Services (DAGS).

II. CURRENT LAW

Chapter 103, HRS, currently has a five percent bidding preference for contractors

that are a party to a registered apprenticeship agreement and must furnish proof as part of the sealed bid. DLIR's role in the law is limited to publishing on its website a list of the approved apprenticeship agreements.

III. COMMENTS ON THE HOUSE BILL

DLIR notes DAGS has jurisdiction over chapter 103 and offers the following comments for the Committee's consideration:

SECTION 1

- The department notes that the bill would create a significant, administrative burden to the department as drafted.
- The proposed new section of chapter 103 (a) and (b) reads in part, "or graduated from an apprenticeship," would not incentivize utilization of apprentices, because graduates' hours (Journey workers) would equally count towards the ten percent of hours. Inclusion of graduates would make it cumbersome for the contractor to secure certification from administrators of the relevant registered apprenticeship agreement(s) as to which laborers and mechanics completed apprenticeship, possibly decades ago.
- DLIR would not be in a position to issue any earned credit certificate. The contracting agency conducts the "...contract close-out procedure..." referred to in (b), and would be in a position to directly issue an earned credit certificate based on documentation provided by the contractor choosing to seek a certificate.
- For 103-55.6, HRS, DLIR provides a list of registered apprenticeship agreements for the information of contracting agencies. That list would be utilized for section 1 of the proposal.
- Since the credit can only be used by a bidder for a future public works construction project, it should be specified that it is the original bidder on the completed contract that is eligible for an earned credit certificate.
- The bill states that the Director of DLIR may undertake rulemaking in the proposed 103 (e), however, the Director does not have jurisdiction over rulemaking for chapter 103.

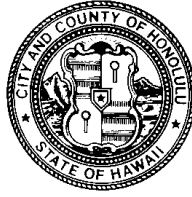
SECTION 2

- Although DLIR does not have jurisdiction over chapter 103, the department supports the proposed clarification to 103-55.6 to the extent it will improve implementation of the intent to incentivize apprenticeship.
- The amendment to subsection 103-55.6(c) is incorrect in meaning DLIR when stating "...the department..." DLIR is not the relevant department to chapter 103. The phrase "... that is recognized in accordance with the

department in their wage rate schedule bulletin...” is unnecessary, and deleting it will address the confusion.

- The Bill proposes to amend subsection 103-55.6(c) in three places by deleting “...apprenticeable trades the bidder will employ...” and replacing it with new language. The two phrases should instead be combined, to read where it appears three times, “...**apprenticeable trade that bidder will employ, according to the type of classifications that the bidder will list on the certified payroll affidavit...**” This will serve as a clarification.
- Should a bidder not be in compliance with the relevant apprentice to journey worker ratio, they should no longer be allowed to be a party to a registered apprenticeship agreement, and the administrator of the that agreement should not certify that they are a party. The discovery and/or determination of non-compliance is a process in itself, which is not conducive to use as proposed in the bill. Language related to the apprentice to journey worker ratio should be deleted.

KIRK CALDWELL
MAYOR



NELSON H. KOYANAGI, JR.
DIRECTOR

GARY T. KUOKAWA
DEPUTY DIRECTOR

TESTIMONY OF NELSON H. KOYANAGI, JR.
DIRECTOR OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
BEFORE THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
February 11, 2016, Conference Room 325

House Bill No. 2457, HD1, "Relating to Procurement"

Position: IN OPPOSITION

TO: The Honorable Rep. Angus L.K. McKelvey, Chair
and Members of the Committee on Consumer Protection & Commerce

The Department of Budget and Fiscal Services, City and County of Honolulu, **opposes**
House Bill No. 2457, HD1, Relating to Procurement.

In general, any bid preference will promote inefficiencies in the State's Procurement Code and will prevent the City from awarding to the offeror who provides the best value. Bid preferences will require additional time and resources for review, and analysis. Bid preferences increase the chances of a protest or complaint. Bid preferences increase costs to the City.

Mahalo for the opportunity to testify on this bill. Should you have any questions or concerns, please feel free to contact the Department of Budget & Fiscal Services' Division of Purchasing at 808-768-5535 or bfs purchasing@honolulu.gov.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



Uploaded via Capitol Website

February 11, 2016

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON,
VICE CHAIR, HOUSE COMMITTEE ON CONSUMER PROTECTION &
COMMERCE

SUBJECT: **OPPOSITION TO H.B. 2457, HD1, RELATING TO PROCUREMENT.**
Establishes an earned credit certificate for contractors in public works projects who meet certain apprenticeship requirements. Clarifies information that a bidder must disclose in a competitive sealed bid for public works projects. (HB2457 HD1)

HEARING

DATE: Thursday, February 11, 2016
TIME: 5:00 p.m.
PLACE: Conference Room 325

Dear Chair McKelvey and Vice Chair Woodson and Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred seventy 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 **opposes** H.B. 2457, HD1 Relating to Procurement, which proposes to establish an earned credit certificate for contractors in public works projects under certain requirements. This measure is a flawed attempt to fix Section 103-55.6 of the Hawaii Revised Statutes, commonly known as "Act 17 (2009)," the Apprenticeship Preference. Under the current law, Act 17 offers a 5% 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. 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. One area that was studied was Act 17 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. In fact, when a vote was taken among Task Force members as to their position on Act 17 the vote reflected ten (10) to repeal, one (1) to modify, and one (1) for no change, therefore the Task Force, whose report was just released yesterday, recommends repeal. See Excerpts of the Report Attached.

This measure, as proposed would not resolve the areas of inconsistencies, and could instead make it more complex to administer, monitor and execute.

For these reasons we request this measure be deferred. Thank you for the opportunity to share our opposition to H.B. 2457, HD1.

**EXCERPTS FROM PROCUREMENT
TASK FORCE REPORT
SCR 92, SD1 (2013)**

APPENDIX A

PREFERENCES

Tally Sheet of Votes Taken

1:30 P.M.

[illegible]

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.

Position Papers
for the
Apprenticeship Program Preference

SUMMARY OF POSITION STATEMENTS SUBMITTED FOR APPRENTICESHIP PREFERENCE BY TASK FORCE MEMBERS

Organization	Position Statement Submitted		Date of Statement
	Yes	No	
TASK FORCE COMMITTEE MEMBERS:			
Dept. of Accounting & General Services (DAGS)	X		10/6/2014
State Procurement Office (SPO)		X	
Dept. of Education (DOE)		X	
Dept. of Transportation (DOT)	X		10/6/2014
University of Hawaii (UH)	X		11/3/2014
Office of Hawaiian Affairs (OHA)		X	
Budget & Fiscal Services Dept. (C & C of Hon.)	X		10/2/2014
Board of Water Supply (BWS)	X		10/6/2014
Honolulu Authority for Rapid Transportation (HART)		X	
General Contractor's Association (GCA)	X		10/6/2014
Subcontractor's Association of Hawaii (SAH)		X	
Hawaii Construction Alliance	X		10/6/2014
Hawaii Building & Construction Trade Council	X		1/30/2015
TASK FORCE NON-COMMITTEE MEMBERS:			
Hawaii Operating Engineers Industry Stabilization Fund	X		10/20/2014
Building Industry Association of Hawaii (BIA)	X		11/4/2014
International Union of Painters and Allied Trades	X		undated

NEIL ABERCROMBIE
GOVERNOR



DEAN H. SEKI
COMPTROLLER
MARIA E. ZIELINSKI
DEPUTY COMPTROLLER


STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

OCT 6 2014

PM-1049.4

TO: The Procurement Code Task Force

FROM: Dean H. Seki
Comptroller 

SUBJECT: Act 17--Apprenticeship Program Preference
Position Statement

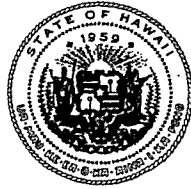
The Department of Accounting and General Services voted to repeal Hawaii Revised Statutes §103-55.6 (Act 17, Session Laws of Hawaii 2009)--Public Works Construction; Apprenticeship Agreement. The intent and purpose of Act 17 were to encourage and ensure the development of a well-trained workforce skilled in the various construction trades. Many of the individuals working in the trades gain their best knowledge of a particular trade through apprenticeship programs, and providing incentives for contractors to offer and maintain these programs will work toward developing the necessary skilled workforce. We offer the following comments and reasons for our vote to repeal this law:

1. There is no evidence that the intent and purpose of the law are being achieved. The complications this law has caused do not seem to be balanced by a significant increase in the number of skilled construction workers where it would justify keeping or modifying the law. Rather, the law has basically been used strictly as a means to gain a bid preference. The Department of Labor and Industrial Relations (DLIR) did not notice a significant difference in the usage of the apprenticeship programs which correlated with the passage of Act 17. They said that enrollment of apprentices has historically followed the business cycles of the construction industry (i.e., lots of apprentices when the construction industry is busy; a reduction in apprentices when the construction industry is slow).
2. There are differences or inconsistencies in its application on the part of the government agencies and trade sponsors. The apprenticeship program preference is not being applied in the same manner by all agencies, causing a degree of confusion among some contractors. For example, contrary to the Comptroller's Memorandum 2011-25, some agencies have told bidders that they only need to submit a single Certification Form 1 to qualify for the preference, when the Comptroller's Memorandum clearly states that an

offeror seeking the preference must be a party to an apprenticeship agreement registered with the DLIR at the time the offer is made for each apprenticable trade the offeror will employ to construct the project and that for each trade employed to perform the work, the offeror shall submit a Certification Form 1 verifying participation in an apprenticeship. DAGS has also become aware of the fact that some of the sponsors are either issuing pre-signed blank forms and/or not checking to see if the form has been properly completed prior to signing it.

3. Finally, the preference increases the amount of time taken to award and administer construction projects. Proper application of the preference often requires agencies to determine whether a contractor is actually self-performing other work covered by the Act. This is difficult for many procurement specialists to determine because it requires an intimate knowledge of both the subcontractor licenses and the capabilities of all trade work covered by the Act, and is further complicated by the fact that some construction workers can be considered to be "multi-skilled." The evaluation process can significantly add to the time between bid opening and award. The preference has been a source of protest for some agencies when it results in a change of awardee. Some agencies have also experienced difficulties ensuring that the extra form is completed and submitted during the construction process.

c: DLIR, Workforce Development Division



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

FORD N. FUCHIGAMI
INTERIM DIRECTOR

Deputy Directors
RANDY GRUNE
AUDREY HIDANO
ROSS M. HIGASHI
JADINE URASAKI

IN REPLY REFER TO:
CON
5.0689

OCT 06 2014

Honorable Dean Seki
State of Hawaii Comptroller
Department of Accounting and General Services
Kalanimoku Building
1151 Punchbowl Street
Honolulu, HI 96813

Honorable Seki:

Subject: RE: State Procurement Task Force Decision Making, the Hawaii
Department of Transportation Position on the Apprenticeship Preference

The Hawaii Department of Transportation (DOT) votes to repeal the five percent (5%) Apprenticeship Preference based on the actual impacts of implementing the preference. First, the cost increase to public works projects. During fiscal year 2013, an additional \$74,000 was added to DOT projects because of the application of the apprenticeship preference. Three (3) out of forty-three (43) projects where the preference was claimed by the second bidder, lowering its bid for evaluation purposes by five percent (5%) and awarded not to the bidder with the lowest bid, but to the second lowest bidder, resulting in a combined total increase of \$74,000. While three (3) projects may be an insignificant number, the volume of work involved in bid evaluation and the number of inquiries/protests regarding the validity of a bidders' Certification of Participation in an Approved Apprenticeship Program (Certification) results in project delays and valuable agency time and effort spent.

The second actual impact is delays in project construction. In fiscal year 2014, a \$12 million project that bid is delayed because of protests. The protested issues are the validity of bidder Certification, and whether the bidder that claimed the apprenticeship preference qualifies for the preference.

The third actual impact is the administrative burden and difficulties in enforcing the apprenticeship preference requirement. Bid evaluation to determine whether the bidder that claimed the apprenticeship preference qualifies for the preference can be challenging and subject to different interpretation among the procuring agencies.

And finally, the actual impact of following the letter of the law. Immaterial or typographical errors could render the Certification invalid and therefore the bidder would be denied the preference. The preference is applied to bidders that are party to an apprenticeship program but employing actual apprentices on the job is not a requirement. In theory, a contractor could be

Honorable Dean Seki

CON 5.0689

party to an apprenticeship program just to claim the preference with no ability or intention of hiring apprentices. For example, a neighbor island contractor could be a party to an apprenticeship program to gain the five percent (5%) preference, even when there are no apprentices available for employment on that particular island. In essence it is a 5% preference just for being a party to an apprenticeship program.

The intent of the law was to provide for a constant flow of a new highly skilled workforce. Rather than attaching this important goal in a procurement preference, could there be instead an incentive program tied to worker's compensation insurance? The Hawaii Department of Labor and Industrial Relations states on its website that a benefit to apprenticeship programs is fewer workers compensation claims.

Questions may be directed to Tammy Lee, DOT Contracts Office Supervisor, at (808) 587-2130.

Very truly yours,



FORD M. FUCHIGAMI
Interim Director

C: Jadine Urasaki, Deputy Director of Projects
Tammy Lee, Contracts Officer



UNIVERSITY
of HAWAII®
SYSTEM

Vice President for Administration

November 3, 2014

The Honorable Dean H. Seki
Comptroller
State of Hawaii
Department of Accounting and General Services
P. O. Box 119
Honolulu, Hawaii 96810-0119

Dear Mr. Seki:

Subject: Repeal of the Apprenticeship Agreement Preference for Construction Projects

The University of Hawaii supports the repeal of the apprenticeship agreement preference under Chapter 103-55.6, Hawaii Revised Statutes, for construction procurements.

The University recognizes the purpose of this preference to increase the enrollment of the various apprenticeship programs registered with the State of Hawaii Department of Labor and Industrial Relations in promoting the development of a well-trained construction workforce. However, the application of this preference to construction procurements has proved a major source of contention and protest as bidders seek to challenge the claims to the preference by bidders who have submitted lower-priced bids in an attempt to displace these bidders for the award of construction contracts. These disputes and protests involve a wide array of issues from technical flaws and errors in the documentation submitted by competing bidders in their applications for the preference to more complex challenges involving contractor licensing and the use of multi-skilled employees performing more than one apprenticeable trade. It is the University's position that there are other means for the State to promote these apprenticeship programs other than through a bid preference which has proved overly disruptive to construction procurements administered by governmental agencies.

Please feel free to contact me if you have any questions or require further information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jan Gouveia".

Jan Gouveia
Vice President for Administration

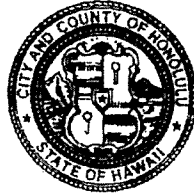
c: Duff Zwald, Director, Office of Procurement
and Real Property Management

2444 Dole Street, Bachman Hall
Honolulu, Hawai'i 96822
Telephone: (808) 956-6405
Fax: (808) 956-9701

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DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: www.honolulu.gov

KIRK CALDWELL
MAYOR



NELSON H. KOYANAGI, JR.
DIRECTOR

GARY T. KUROKAWA
DEPUTY DIRECTOR

October 2, 2014

Dean H. Seki
State Procurement Code Taskforce
Department of Accounting
and General Services
1151 Punchbowl Street
Honolulu, Hawaii 96813

Dear Chair Seki,

SUBJECT: Repeal of the Apprenticeship Preference

The Department of Budget and Fiscal Services, City and County of Honolulu, **strongly supports** the repeal of Hawaii Revised Statutes Section 103-55.6, relating to the apprenticeship preference.

The apprenticeship preference and any bid preference promotes inefficiencies in the State's Procurement Code and when applied will prevent the City from awarding to the offeror who provides the best value. Bid preferences require additional time and resources for review and analysis. Bid preferences increase the chances of a protest or complaint. Bid preferences complicate and further delay the procurement process and increase the cost to the City.

Repealing the apprenticeship preference will allow the City to operate more effectively and efficiently.

Mahalo for the opportunity to provide written testimony to the taskforce. Should you have any questions or concerns, please feel free to contact bfspurchasing@honolulu.gov.

Sincerely,

A handwritten signature in black ink that reads "Michael F. Hiu".

Michael F. Hiu
Assistant Purchasing Administrator

BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU
630 SOUTH BERETANIA STREET
HONOLULU, HI 96843



October 6, 2014

KIRK CALDWELL, MAYOR

DUANE R. MIYASHIRO, Chair
ADAM C. WONG, Vice Chair
MAHEALANI CYPHER
THERESIA C. McMURDO
DAVID C. HULIHEE

ROSS S. SASAMURA, Ex-Officio
FORD N. FUCHIGAMI, Ex-Officio

ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer

ELLEN E. KITAMURA, P.E.
Deputy Manager and Chief Engineer

Mr. Dean H. Seki, Comptroller
State of Hawaii
Department of Accounting and General Services
P.O. Box 119
Honolulu, Hawaii 96810-0119

Dear Mr. Seki:

Subject: Apprenticeship Program Preference

The Board of Water Supply ("BWS") voted to repeal Hawaii Revised Statutes §103-55.6 (Act 17, SLH 2009) because of the administrative difficulty in applying the law consistently. The Comptroller's Memorandum No. 2011-25 was issued to implement and administer the 5% bid preference and provides guidance to the various departments and agencies of the Department of Accounting and General Services.

The BWS has been using the Comptroller's Memorandum No. 2011-25 as no other administrative rules exist. The Comptroller's Memorandum No. 2011-25 clarifies that Contractors are entitled to the 5% bid preference if their employees are multi-skilled and able to perform work in more than one trade. Thus, the BWS is left to interpret whether or not the Contractor is missing a Form 1, Certification of Bidder's Participation in Approved Apprenticeship Program under Act 17, if a Sub-contractor will be employed to perform the work in question, or if the Contractor's employees are multi-skilled.

Act 17 prolongs the procurement process because the BWS needs to identify the apprenticeable trades that should be employed to perform the scope of work and determine which trades the Contractor versus the Sub-Contractor will be performing. The determination of responsiveness and responsibility is required to make an award. This determination is not clear even when the Form 1's are missing because multi-skilled employees can qualify the Contractor to obtain the preference.

It is the ambiguity and administrative difficulty that drives the decision to repeal Act 17, SLH 2009. If you have any questions, please contact Vicki Kitajima at 748-5071.

Very truly yours,

ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer */m*

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

October 6, 2014

HAND-DELIVERED

Honorable Dean Seki, Comptroller
Chair, Procurement Task Force
Comptroller, Department of Accounting and General Services
State of Hawaii
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

RE: Repeal of Act 17, SLH 2000, Apprenticeship Preference

Dear Comptroller Seki,

Thank you for the opportunity to share the General Contractors Association of Hawaii's (GCA) reasons for its position to repeal Act 17, SLH 2000, commonly referred to as the apprenticeship preference, which allows contractors a five percent bid preference if they participate in a state recognized apprenticeship program. The GCA is an organization comprised of approximately six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The 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.

The GCA is opposed to all procurement preferences in public works construction because it generally complicates the administration of the procurement process. Furthermore, such preferences ultimately cost the State of Hawaii and its taxpayers additional funds and often do not achieve the goals intended in passage of the initial legislation.

Background Apprenticeship Programs in Hawaii

In Hawaii, there are currently over 30 state recognized apprenticeship programs, both union and non-union that allow applicants to learn a trade through on-the-job experience and related classroom instruction. These apprenticeship programs continually recruit individuals that are interested in a particular trade and work with the employers for employee retention. Due to the recent economic downturn, some apprenticeship programs have been unable to direct apprentices to employment, thus increasing the availability of the workforce in certain trades. For more information on Hawaii's apprenticeship programs, visit <http://www2.honolulu.hawaii.edu/?q=node/331>

Act 17, SLH, 2009 - Apprenticeship preference Adopted in Hawaii

Act 17, SLH 2009 was enacted to spur creation of additional skilled construction workforce in Hawaii and provide well paid construction jobs for Hawaii's citizens. However, since the passage of Act 17, there are no statistics available to indicate that there have been any significant additional apprentices being trained, if the apprenticeship preference was not in place. GCA believes that the market place better dictates when and how many apprentices will enter the work place. Construction companies will not take on additional apprentices unless they feel they will have additional jobs or will need to replace members of their current work force. Additionally, potential apprentices will likely not seek positions as apprentices unless they believe that journeyman positions will be available at the end of their training, which is governed by the market conditions.

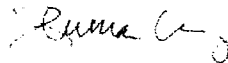
The statistics indicate that in FY2013, only fifteen bids changed in bid order due to the apprenticeship preference out of a total of three hundred sixteen. In 2014, seven bids changed position order due to application of the apprenticeship preference. The administration of the apprenticeship preference beyond the initial determination and its applicability to any bid to see how many apprentices were utilized and in what job categories is not available.

GCA Opposes All Preferences, Including Act 17, SLH 2009

The GCA believes that while well intended the current apprenticeship law pursuant to Act 17, SLH 2009, merely complicates and potentially causes further delay in the procurement process which is already complex with regard to administration and implementation of Act 17, SLH 2009 provisions. While GCA remains sensitive to the intent of the apprenticeship preference, its' intended improvements have not been met. GCA's position against all preferences as it relates to public works construction applies to Act 17, SLH 2009 and other preferences that may give unfair advantage to one contractor over another. For these reasons, GCA would prefer a repeal of Act 17, SLH 2009, rather than a modification to attempt to improve its administration.

Thank you for the opportunity to share our concerns and for considering our position.

With best regards,



Sherman Wong
GCA Task Force Representative

Hawai'i Construction Alliance

P.O. Box 179441
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October 6, 2014

Dean Seki, Comptroller
Department of Accounting and General Services
1151 Punchbowl Street
Honolulu, Hawai'i 96813

RE: Apprenticeship Preference, Act 17 SLH 2009

Dear Mr. Seki,

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Laborers' International Union of North America, Local 368; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

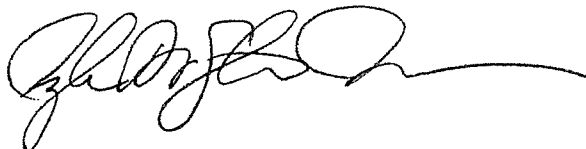
The Hawai'i Construction Alliance is one of the entities named to serve as a member of the task force established by SCR92 (2013) to study the state procurement code and identify amendments that would increase economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects.

At the September 8, 2014 meeting of the task force, members were asked to cast a vote to repeal, modify, or make no changes to the Apprenticeship Preference created by Act 17, SLH 2009. The Hawai'i Construction Alliance cast a vote to make no changes to the Apprenticeship Preference.

At this time, we do not believe that better economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects would be achieved by the repeal of the Apprenticeship Preference. Furthermore, at this time, we cannot identify nor propose any modifications to the state procurement code in regard to the Apprenticeship Preference that would better promote economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects.

We appreciate the opportunity to serve as a member of the task force. We look forward to continued discussions on how the State of Hawai'i and its counties can increase economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects.

Mahalo,



Tyler Dos Santos-Tam
Executive Director
Hawai'i Construction Alliance
execdir@hawaiiconstructionalliance.org



A'ohe hana nui ka alu'ia
"No Task Is Too Big When Done Together By All"

HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

735 Bishop Street, Suite 412 * Honolulu, Hawaii 96813
(808) 524-2249 - FAX (808) 524-6893

KIKA G. BUKOSKI
Executive Director

January 30, 2015

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State Procurement Code Task Force
c/o Department of Accounting and General Services- Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

Re: State Procurement Code Task Force Decision Making- Apprenticeship Preference

Aloha Task Force Members;

Pursuant to Senate Concurrent Resolution 92, Senate Draft 2 (2013), the State Procurement Code Task Force was charged to:

- 1) Identify and propose amendments, if any, to the state procurement code that may better promote economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects, including but not limited to a review of all bid preferences on public works projects;
- 2) Solicit input from the construction industry and determine whether administrative rules governing contractors reflect the intent of the Legislature and chapter 103D, Hawaii Revised Statutes; and
- 3) Submit its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2015.

The Task Force focused on four primary areas of discussion: 1) Bid Preferences, 2) Subcontractor Listing, 3) Bid Protests, and 4) Identifying and Addressing Bad Contractors.

The Hawaii Building and Construction Trades Council, AFL-CIO, as a member of the Task Force joined ten other voting members and voted to 'repeal' HRS 103-55.6 (ACT 17, 2009), Public Works Construction: Apprentice Agreement.

Of the thirteen member Task Force, there were 10 votes to "Repeal", 1 vote to "Amend" and 1 vote for "No Change" with 1 voting member "Absent". All State Administrative Procuring Agencies as well as the General Contractors Association as voting members of the Task Force voted in favor of repealing ACT 17 (2009). Additionally, The Building Industry Association, although not a member of the Task Force, offered written comments also supporting its repeal.

ACT 17 (2009), since its adoption, has been inconsistently interpreted and applied by the various procuring agencies. It has contributed to ongoing confusion and in some cases, protests, added cost to projects, project delays, and an unfair competitive advantages. Rules to implement the law have never been promulgated, but there have been numerous and conflicting advisory memoranda issued by the Comptroller's office that currently misinterprets and undermines its true intent and purpose.

Procuring agencies admittedly lack confidence in the consistent interpretation and/or application of the law. Some Neighbor Island Contractor Associations have expressed concern over the inconsistent application and potential competitive disadvantage when bidding against Oahu contractors. Additionally, apprenticeship programs have expressed ongoing concern that the law as currently interpreted, is not fulfilling its expressed intent of providing for the use of apprentices on public works projects that will promote the ongoing development of a local skilled workforce.

Absent specific amendments to HRS 103-55.6 and clear administrative rules that support and implement the true intent and purpose of the law, HBCTC as a voting member of the State Procurement Code Task Force supports the majority position of the Task Force to repeal ACT 17 (2009); Public Works Construction: Apprentice Agreement.

A'ohe hana nui ka alu'ia
"No Task Is Too Big When Done Together By All"

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

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Stephen Hanson
simplicityHR by ALTRES

November 4, 2014

Honorable Dean Seki, Comptroller
Chair, Procurement Task Force
Comptroller, Department of Accounting and General Services
State of Hawaii
c/o Mr. Eric K. Nishimoto
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

via email: eric.k.nishimoto@hawaii.gov

RE: REPEAL OF APPRENTICESHIP PREFERENCES

Dear Comptroller Seki,

My name is Gladys Marrone, CEO for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-Hawaii supports the repeal of Hawaii Revised Statutes Section 103-55.6, relating to the apprenticeship preference.

HRS §103-55.6 creates additional costs for the agency through increased administration, delays, and higher winning bids. The additional hours and effort required by procurement officers to administer the preference represents serious inefficiencies and added costs. Delays caused by a longer process and higher chances of protest result in significant loss to both the agency and the contractor. Furthermore, preferences prevent the agency from awarding the bid which offers the best value.

While BIA-Hawaii appreciates the intent of the apprenticeship preference to encourage growth of the construction workforce, we believe the costs and unintended consequences outweigh the benefits. This is particularly true today as there is no shortage of apprentices.

We appreciate the opportunity to provide our comments in support of the repeal of the apprenticeship preference.

Sincerely,



Gladys Marrone, CEO
BIA-Hawaii



International Union of Painters and Allied Trades District Council 50

Position Statement By District Council 50

The International Union of Painters and Allied Trades, District Council 50 ("DC50") thanks the State Procurement Task Force for this opportunity to present its position on the following two issues examined by the Task Force.

Apprenticeship Program Preference

With respect to the apprenticeship preference (Hawaii Revised Statutes §103-55.6, also referred to by Task Force members as "Act 17"), DC50 believes that one of the greatest concerns raised in the discussion of the issue - that the law has been ineffective at increasing membership - reflects a problem with the wording of the law. Many of the agencies participating in the Task Force indicated that they apply the apprenticeship preference only to "bidders" due to the use of that term in the statute. Since a "bidder" on a public procurement contract is almost always a general contractor, the preference is being applied to general contractors not subcontractors. Yet there are far more subcontractors working on public construction projects than general contractors. DC50 believes that there would be a considerable increase in the membership of the apprenticeable trades if the law were applied to subcontractors as well as general contractors. Instead of repealing HRS §103-55.6, DC50 thus favors amending it to ensure that subcontractors may also receive the apprenticeship preference.

Identification of "Bad" Contractors/Past Performance

Generally, DC50 supports the amendment of the procurement code to require investigation and consideration of a General Contractor/Sub-Contractor's past performance as a part of that contractor's responsibility determination. This is particularly so with respect to General Contractor/Sub-Contractors who have been debarred and/or fined for safety and/or other violations in other states or on federal government contracts. Although such a requirement may result in increased work for the procurement agency, DC50 believes that this concern is outweighed by competing concerns over public safety and the public interest in ensuring that only responsible contractors are utilized on public construction projects.

Thank you for the opportunity to voice our position on these matters.

Sincerely,

Joseph Gonsalves
Director of Organizing

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Testimony by:
FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

LATE TESTIMONY



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 11, 2016
5:00 p.m.
State Capitol, Room 325

H.B. 2457, H.D. 1 RELATING TO PROCUREMENT

House Committee on Consumer Protection and Commerce

The Department of Transportation (DOT) respectfully **opposes** the proposed bill that would establish an earned credit certificate for contractors on public works projects that can be used in receiving a five per cent preference on a bid for a future public works construction project. Senate Concurrent Resolution 92, Senate Draft 2, of the 2013 Regular Session created a Task Force to assess procurement in public works construction. The five percent Apprenticeship Preference was an identified issue to address and the Task Force voted ten votes to repeal, one vote to modify, and one vote for no change. The proposed bill and the new process of the earned credit certificate seems to further complicate the application of the Apprenticeship Preference.

The current implementation of the Apprenticeship Preference has actual impacts. First, the cost increase to public works projects. During fiscal year 2013, an additional \$74,000 was added to DOT projects because of the application of the apprenticeship preference. Three (3) out of forty-three (43) projects where the preference was claimed by the second bidder, lowering its bid for evaluation purposes by five percent (5%) and awarded not to the bidder with the lowest bid, but to the second lowest bidder, resulting in a combined total increase of \$74,000. While three (3) projects may be an insignificant number, the volume of work involved in bid evaluation and the number of inquiries/protests regarding the validity of a bidders' Certification of Participation in an Approved Apprenticeship Program (Certification) results in project delays and valuable agency time and effort spent.

The second actual impact is delays in project construction. In fiscal year 2014, a \$12 million project that bid was delayed because of protests. The protested issues are the validity of bidder Certification, and whether the bidder that claimed the apprenticeship preference qualifies for the preference.

The third actual impact is the administrative burden and difficulties in enforcing the apprenticeship preference requirement. Bid evaluation to determine whether the bidder

that claimed the apprenticeship preference qualifies for the preference can be challenging and subject to different interpretation among the procuring agencies.

Thank you for the opportunity to provide testimony.