

S.B. NO. 1031

JAN 27 2021

A BILL FOR AN ACT

RELATING TO THE APPRENTICESHIP AGREEMENT PREFERENCE.

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

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 Section 103-55.6, Hawaii Revised Statutes, is repealed.

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

~~(b) For purposes of subsection (a), in determining whether 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 shall be~~

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1 ~~entitled to restitution for nonperformance or liquidated~~
2 ~~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.

14

15 INTRODUCED BY: 

16

BY REQUEST

Report Title:

Apprenticeship

Description:

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

JUSTIFICATION SHEET

DEPARTMENT: Accounting and General Services

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

PURPOSE: The purpose of this bill is 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.

JUSTIFICATION: Section 103-55.6 was intended to incentivize
the use of State-certified apprenticeship
programs by bidders to ensure a well-trained
work force for public works construction.
However, we are unaware of any statistical
evidence that this legislation 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, effectiveness, and impartiality
of the public works construction procurement
process.

The 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 2011-25, these determinations must be made on a project- and bidder- specific basis. The difficulty of making these determinations is increased by the fact that much of the information needed to make it is not readily available to procurement personnel based on the information contained in the bid packages (i.e., information about multi-skilled workers a bidder intends to employ, the manner in which a bidder intends to accomplish certain components of work, etc.). It also requires procurement personnel to be knowledgeable about construction trade-work.

Since agencies must make both project- and bid-specific determinations about which bidders qualify for the preference based on bidder-provided information which 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. The appearance of partiality may be further enhanced by the presence of ambiguities in the legislation, making its terms and application subject to different interpretations among the procuring agencies.

In order 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 union versus non-union sponsors (thirty-six union-sponsored apprenticeship programs vs. five non-union-sponsored programs), the legislation also 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.

In summary, the apprenticeship agreement preference should be removed from the procurement process because the number and scope of negative impacts due to its implementation do not appear to be justified by measurable indicators showing it has achieved its original intent.

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 differences 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 the apprenticeship programs, it will need to find alternative means which 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.