COUNCIL OF THE COUNTY OF MAUI

GOVERNMENT RELATIONS, ETHICS, AND TRANSPARENCY COMMITTEE

September 20, 2022

Committee Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Government Relations, Ethics, and Transparency Committee, having met on August 30, 2022, and reconvened on August 31, 2022, makes reference to the following:

1. County Communication 21-43, from Council Chair Alice L. Lee, relating to the Hawaii State Association of Counties.

2. Resolution 22-197 entitled "APPROVING FOR INCLUSION IN THE 2023 HAWAII STATE ASSOCIATION OF COUNTIES LEGISLATIVE PACKAGE A STATE BILL RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE."

   Resolution 22-197's purpose is to approve for inclusion in the 2023 Hawai'i State Association of Counties Legislative Package a proposed State bill, attached as Exhibit "A," entitled "A BILL FOR AN ACT RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE."

   The purpose of the proposed State bill is to preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded capital improvement projects based on past experience, quality craftwork, efficient operation, and safety.

3. County Communication 21-44, from Council Chair Alice L. Lee, relating to the Maui County Council Legislative Package.

4. Resolution 22-202 entitled "APPROVING FOR INCLUSION IN THE 2023 MAUI COUNTY COUNCIL LEGISLATIVE PACKAGE A STATE BILL RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE."

   Resolution 22-202's purpose is to approve for inclusion in the 2023 Maui County Council Legislative Package a proposed State bill, attached as Exhibit "A," entitled "A BILL FOR AN ACT RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE."

   The purpose of the proposed State bill is to preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded capital improvement projects based on past experience, quality craftwork, efficient operation, and safety.

Your Committee notes the proposed State bills were drafted in response to concerns posed by skilled laborers who felt cheated out of fair wages but failed to bring the issue up with their employers out of fear for their job security.

Your Committee further notes the proposed State bills were modeled after legislation proposed by the Indiana, Illinois, Iowa Foundation for Fair Contracting.

Your Committee agreed with testifiers who called for transparency in government spending by ensuring procurement laws are followed. They stressed the importance of requiring specific qualifications for contractors and subcontractors and that this information be disclosed and made available for public inspection for increased accountability.

Your Committee also relied on testimony received from the Executive Director of the Hawai'i Operating Engineers Industry Stabilization Fund on behalf of the Labor-Management Fund which represents 3,000 unionized members in heavy engineering site work and 500 general contractors specializing in heavy site and vertical construction.

The testimony noted that since the mid-1990s, the Organization's compliance team filed many complaints with public agencies against "low road" contractors who cheated their employees out of proper wages, vacation pay, medical and health benefits, and retirement pay. The testimony added that by establishing verifiable standards and objective criteria, the legislation would ensure public agencies employ "high road" contractors who adhere to high ethical standards, ensure training for their employees, and follow Hawai'i's laws for procurement, wage standards, and safety.

Your Committee voted 7-0 to recommend adoption of Resolution 22-197 and Resolution 22-202. Committee Chair Molina and members Johnson, Kama, King, Lee, Paltin, and Sinenci voted "aye." Committee Vice-Chair Rawlins-Fernandez and member Sugimura were excused.

Your Government Relations, Ethics, and Transparency Committee RECOMMENDS the following:

1. That Resolution 22-197, attached hereto, entitled "APPROVING FOR INCLUSION IN THE 2023 HAWAII STATE ASSOCIATION OF COUNTIES LEGISLATIVE PACKAGE A STATE BILL RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE," be ADOPTED; and

2. That Resolution 22-202, attached hereto, entitled "APPROVING FOR INCLUSION IN THE 2023 MAUI COUNTY COUNCIL LEGISLATIVE PACKAGE A STATE BILL RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE," be ADOPTED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.

MICHAEL J. MOLINA, Chair

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Resolution

No. 22-197

APPROVING FOR INCLUSION IN THE 2023
HAWAII STATE ASSOCIATION OF COUNTIES
LEGISLATIVE PACKAGE A STATE BILL
RELATING TO THE HAWAII PUBLIC
PROCUREMENT CODE

WHEREAS, the Council finds State law should be amended to preserve public resources by ensuring that only the most highly qualified contractors and subcontractors are awarded capital improvement projects—based on past experiences, quality craftwork, efficient operation, and safety, as documented by comprehensive submission requirements; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the proposed State bill, attached as Exhibit "A," relating to the Hawaii Public Procurement Code, is approved for inclusion in the 2023 Hawaii State Association of Counties Legislative Package; and

2. That certified copies of this Resolution be transmitted to the Hawaii State Association of Counties Executive Committee.

paf:brs:22-190c

INTRODUCED BY:

Tamara A. M. Paltin

TAMARA PALTIN

Exhibit "A"

__.B. NO._____

A BILL FOR AN ACT

RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE.

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

SECTION 1. The purpose of this Act is to preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded capital improvement projects based on past experiences, quality craftwork, efficient operation, and safety. The timely completion of projects are not necessarily ensured by awarding a capital improvement project solely on the basis of the low bid.

This Act enhances government's ability to identify the lowest "responsible bidder" on all capital improvement projects by instituting more comprehensive submission requirements.

The State of Hawaii and its counties have a compelling proprietary interest in awarding contracts for capital improvement projects in a manner that will yield successful project delivery in terms of work that is performed safely at the lowest responsible cost and in accordance with the highest possible standards of quality and efficiency.

Securing successful delivery of capital improvement projects presents significant challenges due to the complex,

unpredictable, and inherently dangerous nature of the construction industry, where errors in project planning or execution, including those caused by inexperienced or unqualified craft labor personnel, can result in serious safety risks, excessive cost overruns, flawed or inferior project quality, and disruptions in project schedules that may delay the use of critical government functions or facilities.

SECTION 2. Section 103D-104, Hawaii Revised Statues, is amended by amending the definition of "past performance" to read as follows:

""Past performance" means available recent and relevant performance of a contractor, including positive, negative, or lack of previous experience, [~~on contracts that shall~~] by the contractor on State, federal, or private contracts to be considered [~~in~~] as a responsibility determination within the relevance of the current solicitation, including the considerations of section 103D-702(B)."

SECTION 3. Section 103D-310, Hawaii Revised Statutes, is amended to read as follows:

"**§ 103D-310 Responsibility of offerors.** (a) Unless the policy board, by rules, specifies otherwise, before submitting an offer, a prospective offeror, not less than ten calendar days

prior to the day designated for opening offers, shall give written notice of the intention to submit an offer to the procurement officer responsible for that particular procurement.

(b) Whether or not an intention to bid is required, the procurement officer shall [~~determine~~] make a determination of responsibility for all prospective offerors, including whether the prospective offeror has the financial ability, resources, skills, capability, and business integrity necessary to perform the work. For the purpose of making a responsibility determination, the procurement officer shall [~~possess or obtain available information, including past performance, sufficient to be satisfied that a prospective offeror meets the applicable standards. The officer, in the officer's discretion, may~~] require any prospective offeror to submit answers, under oath, to questions contained in a standard form of questionnaire to be prepared by the policy board. Whenever it appears from answers to the questionnaire or otherwise, that the prospective offeror is not fully qualified and able to perform the intended work, a written determination of nonresponsibility of an offeror shall be made by the head of the purchasing agency, in accordance with rules adopted by the policy board. The unreasonable failure of an offeror to promptly supply information in connection with an

1 inquiry with respect to responsibility may be grounds for a
2 determination of nonresponsibility with respect to such offeror.
3 The decision of the head of the purchasing agency shall be final
4 unless the offeror applies for administrative review pursuant to
5 section 103D-709.
6 (i) The standard form questionnaire shall include the
7 following:
8 (a) Evidence of compliance with all provisions of
9 chapter 104 for the past five years or, if they have been
10 operating for less than five years, the amount of time they
11 have been in operation.
12 (b) Record of any complaints that required corrective
13 action during the course of a project.
14 (c) Evidence of participation in applicable
15 apprenticeship programs.
16 (d) Safety and health Information:
17 (i) Written safety policy.
18 (ii) Copies of the OSHA 300 log required by title
19 29 Code of Federal Regulations part 1904.
20 (iii) Contractor safety and health questionnaire.
21 (iv) Verification that individuals are properly
22 classified as employees or independent contractors.

(v) Statements of past performance for five years.

(a) To include original price and final price of projects.

(b) To include violations or pending violations within the past five years. The procurement officer shall consider all available recent and relevant past performance of the offeror.

(c) All offerors, upon award of contract, shall comply with all laws governing entities doing business in the State, including chapters 237, 383, 386, 392, and 393. Offerors shall [~~produce documents to the procuring officer to demonstrate compliance with this subsection~~] submit the required standard form questionnaire on an annual basis to be prequalified as "responsible" for projects, by the procurement office. Any offeror making a false affirmation or certification under this subsection shall be suspended from further offerings or awards pursuant to section 103D-702. The procuring officer shall verify compliance with this subsection for all contracts awarded pursuant to sections 103D-302, 103D-303, 103D-304, and 103D-306, and for contracts and procurements of $2,500 or more awarded

pursuant to section 103D-305; provided that the attorney general may waive the requirements of this subsection for contracts for legal services if the attorney general certifies in writing that comparable legal services are not available in this State.

(d) Information furnished by an offeror pursuant to this section, on the standard form questionnaire, shall [~~not be disclosed to any person except to law enforcement agencies~~] be available for public inspection or duplication as provided by chapter 92F."

SECTION 4. Statutory material to be deleted is bracketed and in strikethrough. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY:_____

Resolution

No. 22-202

APPROVING FOR INCLUSION IN THE 2023 MAUI COUNTY COUNCIL LEGISLATIVE PACKAGE A STATE BILL RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE

WHEREAS, the Council finds State law should be amended to preserve public resources by ensuring that only the most highly qualified contractors and subcontractors are awarded capital improvement projects—based on past experiences, quality craftwork, efficient operation, and safety, as documented by comprehensive submission requirements; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the proposed State bill, attached as Exhibit "A," relating to the Hawaii Public Procurement Code, is approved for inclusion in the 2023 Maui County Council Legislative Package; and

2. That certified copies of this Resolution be transmitted to the Mayor.

paf:brs:22-190b

INTRODUCED BY:

Tamara A. M. Paltin

TAMARA PALTIN

Exhibit "A"

__.B. NO._____

A BILL FOR AN ACT

RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE.

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

SECTION 1. The purpose of this Act is to preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded capital improvement projects based on past experiences, quality craftwork, efficient operation, and safety. The timely completion of projects are not necessarily ensured by awarding a capital improvement project solely on the basis of the low bid.

This Act enhances government's ability to identify the lowest "responsible bidder" on all capital improvement projects by instituting more comprehensive submission requirements.

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