

# SB 2413

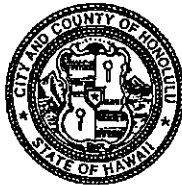
## **RELATING TO PROCUREMENT**

### *Description:*

Requires solicitations for procurement of construction to require offerors to list subcontractors if the value of the contract is in excess of \$500,000 and the work to be performed by the subcontractor is in excess of \$25,000. Allows substitution of subcontractors if 75% of saving resulting from the substitution are refunded to the purchasing agency.

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

PETER B. CARLISLE  
MAYOR



MICHAEL R. HANSEN  
DIRECTOR

NELSON H. KOYANAGI, JR.  
DEPUTY DIRECTOR

TESTIMONY OF MICHAEL R. HANSEN, DIRECTOR  
DEPARTMENT OF BUDGET AND FISCAL SERVICES  
CITY AND COUNTY OF HONOLULU

Sen. Will Espero, Chair,  
Sen. Michelle N. Kidani, Vice Chair,  
and Members of Committee on  
Public Safety, Government Operations,  
and Military Affairs  
The Senate  
The Twenty-Fifth State Legislature  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Espero, Vice Chair Kidani and Members:

Subject: PGM Committee - February 7, 2012 at 2:45 p.m. HST  
Senate Bill No. 2413 Relating to Procurement.

Thank you for the opportunity to testify on S.B. No. 2413. The City & County of Honolulu opposes S.B. No. 2413 which proposes a new section for the "substitution of subcontractors", complicates the competitive sealed bid process for construction projects, and amends the competitive sealed proposal process to include the requirement of listing subcontractor for construction projects.

SECTION 1 of the bill inappropriately requires the government agency to become involved with a party which it does not have a contractual agreement and may entangle the government agency in any disputes between a general and a subcontractor. Secondly, it may encourage general contractors to seek to replace subcontractors which may create project delays.

SECTION 2 of the bill complicates the competitive sealed bid process for construction projects. It will require bidders to follow two (2) different subcontractor listing requirements based on the amount of their bid and will eliminate any efficient gains brought about through the standardization of the solicitation process.

SECTION 3 of the bill impractically requires the listing of subcontractors for competitive sealed proposals, also known as requests for proposals. This is because most construction projects procured under this method are "design/build projects" in that they involve the furnishing of both the design and the construction of the project. It is not practical to name the subcontractors before the design is completed.

Thank you.

# IRONWORKERS STABILIZATION FUND

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February 2, 2012

Wil Espero, Chair  
Committee on Public Safety, Government Operations & Military Affairs  
State Senate  
State Capitol  
415 S. Beretania Street  
Honolulu, Hawaii 96813

Date: February 7, 2012  
Time: 2:45 p.m.  
Place: Conference Room 224, State Capitol

Dear Honorable Chair Espero and Members of the Committee on Public Safety, Government Operations & Military Affairs:

Re: Strong Support for SB2413 – Relating to Procurement

We are in strong support of SB 2413, Relating to Procurement; that requires solicitations for procurement of construction to list subcontractors on construction projects with amendments.

The purpose of this bill is to ensure that any replacement of any subcontractors are licensed and meet the same standards that were posted on the bid specifications. Additionally, we believe it is only fair that there should be a written notice by the subcontractor who is being replaced to the agency involved. This bill will additionally provide savings to the State of Hawaii during this economic turbulent time.

We request that you change the language on the bill to state that any solicitation will need to list all the subcontractors and this is for any and all work done by subcontractors.

Again we strongly support this measure for the working men and women of Hawaii. Thank you for your time and consideration.

Sincerely,

Arnold Wong /s/

# STEEL FABRICATORS AND ERECTORS OF HAWAII

P.O. Box 30062, Honolulu, Hawaii 96820-0062

February 2, 2012

Wil Espero, Chair  
Committee on Public Safety, Government Operations & Military Affairs  
State Senate  
State Capitol  
415 S. Beretania Street  
Honolulu, Hawaii 96813

Date: February 7, 2012  
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Re: Strong Support for SB2413 – Relating to Procurement

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We request that you change the language on the bill to state that any solicitation will need to list all the subcontractors and this is for any and all work done by subcontractors.

Again we strongly support this measure for the working men and women of Hawaii. Thank you for your time and consideration.

Respectfully submitted,

T. Kawika Chun, President

# **BIA-HAWAII**

## **BUILDING INDUSTRY ASSOCIATION**

*"Building Better Communities"*

### **2012 Officers**

**President**  
Dean I. Asahina  
Universal Construction, Inc.

**President-Elect**  
Greg Thielen  
Complete Construction Services Corp.

**Vice President**  
Brian Adachi  
BKA Builders, Inc.

**Treasurer**  
Timothy J. Waite  
Simpson Strong-Tie Co., Inc.

**Secretary**  
Michael J. Brant  
Gentry Homes, Ltd.

**Special Appointee-BUILDER**  
Paul D. Silen  
Hawaiian Dredging Construction Co., Inc.

**Special Appointee-Associate**  
Craig Washofsky  
Servco Home & Appliance Distribution

**Immediate Past President**  
James Byxbee  
Homeworks Construction, Inc.

**Executive Vice President/  
Chief Executive Officer**  
Karen T. Nakamura  
BIA-Hawaii

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**2012 Directors**

Clifton Crawford  
C&J Contracting, Inc.

David S. Chang  
CS Design Builders

Dean Uchida  
SSFM International, Inc.

Gary T. Okimoto  
Honolulu Wood Treating

Guy J. Shindo  
First Hawaiian Bank

James Dixon  
Island Insurance Company, Ltd.

Karin L. Holma  
Bays Lung Rose & Holma

Mark Kennedy  
HASEKO Construction Kamakana, LLC

Marnie Koga Hursty  
Mega Construction

Scotty Anderson  
Pacific Rim Partners

Sunny Walsh  
Hunt Building Company, Ltd.

W. Bruce Barrett  
Castle & Cooke Homes Hawaii, Inc.

**Testimony to the Senate Committee on Public Safety, Government Operations, & Military Affairs**  
Tuesday, February 7, 2012  
2:45 p.m.  
State Capitol, Room 224

### **RE: S.B. 2413, Relating to Procurement**

Good morning Chair Espero, Vice Chair Kidani, and members of the committee:

My name is Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, BIA-Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

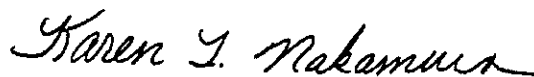
BIA-Hawaii is **strongly opposed** to S.B. 2413, which proposes to require solicitations for procurement of construction to require offerors to list subcontractors if the value of the contract is in excess of \$500,000 and the work to be performed by the subcontractor is in excess of \$25,000. Allows substitution of subcontractors if 75% of saving resulting from the substitution are refunded to the purchasing agency.

S.B. 2413 complicates the competitive sealed bid process for construction projects. It inserts the "subcontractor listing" requirement for low-bid procurement only (HRS Section 103D-302(b)), into section 103D-303 involving Competitive Sealed Proposals. Among other uses, section 103D-303 governs design-build procurements and other "best value" solicitations. We believe that the current subcontractor listing requirement for low-bid procurements is the single most used source of protests in construction procurement.

S.B. 2413 encourages the unfair practice of bid shopping and goes against all initiatives to streamline the procurement process.

For the foregoing reasons, BIA-Hawaii is **strongly opposed** to S.B. 2413.

Thank you for the opportunity to share with you our views.



EVP/CEO  
BIA-Hawaii

1065 Ahua Street  
Honolulu, HI 96819  
Phone: 808-833-1681 FAX: 839-4167  
Email: [info@gcahawaii.org](mailto:info@gcahawaii.org)  
Website: [www.gcahawaii.org](http://www.gcahawaii.org)



**GCA of Hawaii**

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 7, 2012

TO: HONORABLE SENATORS WILL ESPERO, CHAIR, MICHELLE KIDANI,  
VICE CHAIR AND MEMBERS OF Senate Committee on Public Safety,  
Government Operations, and Military Affairs

SUBJECT: **STRONG OPPOSITION TO S.B. 2413, RELATING TO PROCUREMENT.**  
Requires solicitations for procurement of construction to require offerors to list subcontractors if the value of the contract is in excess of \$500,000 and the work to be performed by the subcontractor is in excess of \$25,000. Allows substitution of subcontractors if 75% of saving resulting from the substitution are refunded to the purchasing agency.

HEARING

DATE: Tuesday, February 7, 2012

TIME: 2:45 PM

PLACE: Conference Room 224

Dear Chair Espero, Vice Chair Kidani and Members of the Committee:

The General Contractors Association (GCA) is an organization comprised of over six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is celebrating its 80<sup>th</sup> anniversary; GCA remains the largest construction association in the State of Hawaii. GCA is submitting testimony **in strong opposition** to S.B. 2413, Relating to Procurement.

Among other changes, this bill inserts the "subcontractor listing" requirement for low-bid procurement only (HRS Section 103D-302(b)), into section 103D-303 involving Competitive Sealed Proposals. Among other uses, section 103D-303 governs design-build procurements and other "best value" solicitations.

The GCA believes that the current subcontractor listing requirement for low-bid procurements is the single most used source of protests in construction procurement, causing procurement agencies, not only to spend its valuable resources to handle the protests, but also, has resulted in delays in delivering projects out to the construction industry work force in a timely manner. In many cases, awards based on bid-listing protests have gone to bidders with a higher bid price to the detriment of the taxpayers. Adding this to another procurement source would aggravate the problem as well as be impractical to implement under many competitive sealed proposal solicitations.

For example, for design-build solicitations, bid submissions are based on other than complete designs for a project where bidders have not yet obtained firm and reliable proposals from subcontractors. It would be impractical for bidders to name subcontractors for these solicitations. Most importantly, it would add yet another source of bid protests that hinders the State's efforts to stimulate the economy by quickly delivering construction projects out to the work force.

The bill also adds a requirement to include the "location of the place of business" of each subcontractor/joint contractor listed. Besides adding another burden on bidders trying to provide its best price proposal to the State just before it is due, this added requirement would be another source of bid protests by disgruntled unsuccessful bidders trying to knock out the low bidder.

The bill further adds a provision permitting substitution of subcontractors listed in a bid proposal under certain conditions. Though creditable in its intent, those provisions are impractical to implement, puts another burden on procuring agencies to implement, and adds another basis for protests and resultant procurement delays.

**Accordingly, the GCA strongly opposes S.B. 2413 and recommends that the bill be held in the committee.**

Thank you for the opportunity to present our views on this bill.

# PLUMBING & MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII



TELEPHONE: (808) 597-1216  
FAX: (808) 597-1409  
1314 S. King Street, Suite 961  
Honolulu, Hawaii 96814

GREGG S. SERIKAKU  
EXECUTIVE DIRECTOR

Via Email

February 2, 2012

Senator Will Espero  
Committee on Public Safety, Government Operations and Military Affairs  
The Senate  
The Twenty-Sixth Legislature, Regular Session of 2012

Chair Espero, Vice Chair Kidani, and Members of the Committee:

**SUBJECT: SB2413 Relating to Procurement**

My name is Gregg Serikaku. I am the Executive Director of the Plumbing and Mechanical Contractors Association of Hawaii. Our Association represents over 40 major plumbing and mechanical contractors who employ over 1,000 mechanics, technicians, managerial staff, and administrative personnel here in Hawaii.

The Association for which I speak is **strongly opposed** to SB2413.

This bill is extremely detrimental to specialty contractors because it promotes the unethical practice of "bid shopping" by increasing the threshold for contracts that require the subcontractor listing and scope of work to projects greater than \$500,000. This problem is further amplified by allowing for the substitution of subcontractors.

Under this bill, a general contractor who is awarded a \$500,000 project would now be free to "bid shop" all of his subcontractors who typically make up roughly 80% of the job. This 80% translates to a \$400,000 exposure to bid shopping for subcontractors.

To compound this, the proposed bill would allow for substitution of subcontractors after an award is made which is tantamount to bid shopping. By allowing for substitutions with no basis, you hurt reputable subcontractors that spend a significant amount of time and money designing, planning, estimating, and pricing materials in order to offer the best price to a general contractor, only to have that general contractor then offer his "preferred" sub the chance to get the job if the preferred sub can cut the originally listed sub's price by \$XXXX amount. Although this bill tries to discourage this practice by offering the procurement agency a 75% refund of all cost savings realized by a substitution of a subcontractor, it does not clarify whether there is a minimum savings threshold before a substitution can be made, or who will be responsible for verifying the realized savings (procurement agency, general contractor?), and why the general contractor is allowed to keep 25% of the savings?

In summary, this bill hurts reputable subcontractors, encourages unethical business practices, and does not expedite the procurement process. In fact, we believe this bill would create further delays due to numerous protests that is sure to be lodged by wrongfully substituted contractors.

We therefore respectfully urge the committee to hold this bill.

Respectfully yours,

A handwritten signature in cursive script, reading "Gregg S. Serikaku", is positioned above the typed name and title.

Gregg S. Serikaku  
Executive Director



# JAS W GLOVER LTD.

Via E-mail: [PGMTestimony@capitol.hawaii.gov](mailto:PGMTestimony@capitol.hawaii.gov)

February 7, 2012

TO: HONORABLE SENATORS WILL ESPERO, CHAIR, MICHELLE KIDANI,  
VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON  
PUBLIC SAFETY, GOVERNMENT OPERATIONS AND MILITARY  
AFFAIRS

SUBJECT: **STRONG OPPOSITION TO S.B. 2413, RELATING TO PROCUREMENT.**  
Requires solicitations for procurement of construction to require offerors to list subcontractors if the value of the contract is in excess of \$500,000 and the work to be performed by the subcontractor is in excess of \$25,000. Allows substitution of subcontractors if 75% of saving resulting from the substitution are refunded to the purchasing agency.

## HEARING

DATE: Tuesday, February 7, 2012

TIME: 2:45 PM

PLACE: Conference Room 224

Dear Chair Espero, Vice Chair Kidani and Members of the Committee:

**Jas. W. Glover, Ltd. strongly opposes** the passage of S.B. 2413, Relating to Procurement because it will likely make bid protests increase due to the proposed subcontractor listing amendments. Although this bill purports to promote savings for the state in Section 1 with a proposed 75% cost savings from the substitution of a subcontractor to be returned to the purchasing agency, it will instead have a much different effect due to the increased likelihood of bid protests that would be permissible under the proposed language.

Among other changes, this bill inserts the "subcontractor listing" requirement for low-bid procurement only (HRS Section 103D-302(b)), into section 103D-303 involving Competitive Sealed Proposals. Among other uses, section 103D-303 governs design-build procurements and other "best value" solicitations.

Jas. W. Glover, Ltd. believes that the current subcontractor listing requirement for low-bid procurements is the single most used source of protests in construction procurement. Thereby causing procurement agencies, not only to spend its valuable resources to handle the protests, but also, resulting in delays in delivering projects out to the construction industry work force in a timely manner. In many cases, awards based on bid-listing protests have gone to bidders with a higher bid price to the detriment of the taxpayers. Adding this to another procurement source would aggravate the problem as well as be impractical to implement under many competitive sealed proposal solicitations.

For example, in design-build solicitations, bid submissions are based on other than complete designs for a project where bidders have not yet obtained firm and reliable proposals from subcontractors. It would be impractical for bidders to name subcontractors for these solicitations. Most importantly, it would add yet another source of bid protests that hinders the State's efforts to stimulate the economy by quickly delivering construction projects out to the work force.

The bill also adds a requirement to include the "location of the place of business" of each subcontractor/joint contractor listed. Besides adding another burden on bidders trying to provide its best price proposal to the State just before it is due, this added requirement would be another source of bid protests by disgruntled unsuccessful bidders trying to knock out the low bidder.

The bill further adds a provision permitting substitution of subcontractors listed in a bid proposal under certain conditions. Though creditable in its intent, those provisions are impractical to implement, puts another burden on procuring agencies to implement, and adds another basis for protests and resultant procurement delays.

**Accordingly, Jas. W. Glover, Ltd. strongly opposes H.B. 2413 and recommends that the bill be held in the committee.**

Thank you for the opportunity to present our views on this bill.

Sincerely,



John Romanowski  
Vice President

---

**Grace Pacific**  
CORPORATION  
P.O. Box 78 / Honolulu, Hawaii 96810

Administrative Office (808) 674-8383 fax (808) 674-1040  
Paving Office (808) 845-3991 fax (808) 842-3206  
Quarry Office (808) 672-3545 fax (808) 672-3998



Via E-mail: [PGMTestimony@capitol.hawaii.gov](mailto:PGMTestimony@capitol.hawaii.gov)

February 6, 2012

**TO:** HONORABLE SENATORS WILL ESPERO, CHAIR, MICHELLE KIDANI, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS AND MILITARY AFFAIRS

**SUBJECT: STRONG OPPOSITION TO S.B. 2413, RELATING TO PROCUREMENT.**

Requires solicitations for procurement of construction to require offerors to list subcontractors if the value of the contract is in excess of \$500,000 and the work to be performed by the subcontractor is in excess of \$25,000. Allows substitution of subcontractors if 75% of saving resulting from the substitution are refunded to the purchasing agency.

HEARING

DATE: Tuesday, February 7, 2012  
TIME: 2:45 PM  
PLACE: Conference Room 224

Dear Chair Espero, Vice Chair Kidani and Members of the Committee:

Grace Pacific Corporation **strongly opposes** the passage of S.B. 2413, Relating to Procurement because it will likely make bid protests increase due to the proposed subcontractor listing amendments. Although this bill purports to promote savings for the state in Section 1 with a proposed 75% cost savings from the substitution of a subcontractor to be returned to the purchasing agency, it will instead have a much different effect due to the increased likelihood of bid protests that would be permissible under the proposed language.

Among other changes, this bill inserts the "subcontractor listing" requirement for low-bid procurement only (HRS Section 103D-302(b)), into section 103D-303 involving Competitive Sealed Proposals. Among other uses, section 103D-303 governs design-build procurements and other "best value" solicitations.

Grace Pacific Corporation believes that the current subcontractor listing requirement for low-bid procurements is the single most used source of protests in construction procurement. Thereby causing procurement agencies, not only to spend its valuable resources to handle the protests, but also, resulting in delays in delivering projects out to the construction industry work force in a timely manner. In many cases, awards based on bid-listing protests have gone to bidders with a higher bid price to the detriment of the taxpayers. Adding this to another procurement source would aggravate the problem as well as be impractical to implement under many competitive sealed proposal solicitations.

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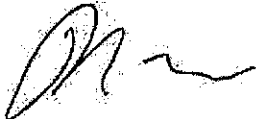
The bill also adds a requirement to include the "location of the place of business" of each subcontractor/joint contractor listed. Besides adding another burden on bidders trying to provide its best price proposal to the State just before it is due, this added requirement would be another source of bid protests by disgruntled unsuccessful bidders trying to knock out the low bidder.

The bill further adds a provision permitting substitution of subcontractors listed in a bid proposal under certain conditions. Though creditable in its intent, those provisions are impractical to implement, puts another burden on procuring agencies to implement, and adds another basis for protests and resultant procurement delays.

**Accordingly, Grace Pacific Corporation strongly opposes H.B. 2413 and recommends that the bill be held in the committee.**

Thank you for the opportunity to present our views on this bill.

Grace Pacific Corporation



Raymond Nii  
Manager, Eng, Admin, IDIQ

# KING & NEEL, INC.

1164 Bishop Street • Suite 1710 • Honolulu, Hawaii 96813  
Telephone: (808) 521-8311  
Fax: (808) 526-3893



Via E-mail: [PGMTestimony@capitol.hawaii.gov](mailto:PGMTestimony@capitol.hawaii.gov)

February 6, 2012

TO: HONORABLE SENATORS WILL ESPERO, CHAIR, MICHELLE KIDANI,  
VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON  
PUBLIC SAFETY, GOVERNMENT OPERATIONS AND MILITARY  
AFFAIRS

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the work to be performed by the subcontractor is in excess of \$25,000.  
Allows substitution of subcontractors if 75% of saving resulting from the  
substitution are refunded to the purchasing agency.

## HEARING

DATE: Tuesday, February 7, 2012  
TIME: 2:45 PM  
PLACE: Conference Room 224

Dear Chair Espero, Vice Chair Kidani and Members of the Committee:

**King & Neel, Inc. strongly opposes** the passage of S.B. 2413, Relating to Procurement because it will likely make bid protests increase due to the proposed subcontractor listing amendments. Although this bill purports to promote savings for the state in Section 1 with a proposed 75% cost savings from the substitution of a subcontractor to be returned to the purchasing agency, it will instead have a much different effect due to the increased likelihood of bid protests that would be permissible under the proposed language.

Among other changes, this bill inserts the "subcontractor listing" requirement for low-bid procurement only (HRS Section 103D-302(b)), into section 103D-303 involving Competitive Sealed Proposals. Among other uses, section 103D-303 governs design-build procurements and other "best value" solicitations.

King & Neel, Inc. believes that the current subcontractor listing requirement for low-bid procurements is the single most used source of protests in construction procurement. Thereby causing procurement agencies, not only to spend its valuable resources to handle the protests, but also, resulting in delays in delivering projects out to the construction industry work force in a timely manner. In many cases, awards based on bid-listing protests have gone to bidders with a higher bid price to the detriment of the taxpayers. Adding this to another procurement source would aggravate the problem as

*Insurance/Surety Bonds/Risk Management*

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The bill also adds a requirement to include the "location of the place of business" of each subcontractor/joint contractor listed. Besides adding another burden on bidders trying to provide its best price proposal to the State just before it is due, this added requirement would be another source of bid protests by disgruntled unsuccessful bidders trying to knock out the low bidder.

The bill further adds a provision permitting substitution of subcontractors listed in a bid proposal under certain conditions. Though creditable in its intent, those provisions are impractical to implement, puts another burden on procuring agencies to implement, and adds another basis for protests and resultant procurement delays.

**Accordingly, King & Neel, Inc. strongly opposes H.B. 2413 and recommends that the bill be held in the committee.**

Thank you for the opportunity to present our views on this bill.



**S & M SAKAMOTO, INC.**  
GENERAL CONTRACTORS

Via E-mail: [PGMTestimony@capitol.hawaii.gov](mailto:PGMTestimony@capitol.hawaii.gov)

February 7, 2012

TO: HONORABLE SENATORS WILL ESPERO, CHAIR, MICHELLE KIDANI,  
VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON  
PUBLIC SAFETY, GOVERNMENT OPERATIONS AND MILITARY  
AFFAIRS

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Allows substitution of subcontractors if 75% of saving resulting from the  
substitution are refunded to the purchasing agency.

HEARING

DATE: Tuesday, February 7, 2012  
TIME: 2:45 PM  
PLACE: Conference Room 224

Dear Chair Espero, Vice Chair Kidani and Members of the Committee:

**S&M Sakamoto, Inc. strongly opposes** the passage of S.B. 2413, Relating to Procurement because it will likely make bid protests increase due to the proposed subcontractor listing amendments. Although this bill purports to promote savings for the state in Section 1 with a proposed 75% cost savings from the substitution of a subcontractor to be returned to the purchasing agency, it will instead have a much different effect due to the increased likelihood of bid protests that would be permissible under the proposed language.

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**S&M Sakamoto, Inc.** believes that the current subcontractor listing requirement for low-bid procurements is the single most used source of protests in construction procurement. Thereby causing procurement agencies, not only to spend its valuable resources to handle the protests, but also, resulting in delays in delivering projects out to the construction industry work force in a timely manner. In many cases, awards based on bid-listing protests have gone to bidders with a higher bid price to the detriment of the taxpayers. Adding this to another procurement source would aggravate the problem as well as be impractical to implement under many competitive sealed proposal solicitations.

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The bill further adds a provision permitting substitution of subcontractors listed in a bid proposal under certain conditions. Though creditable in its intent, those provisions are impractical to implement, puts another burden on procuring agencies to implement, and adds another basis for protests and resultant procurement delays.

**Accordingly, S&M Sakamoto, Inc. strongly opposes H.B. 2413 and recommends that the bill be held in the committee.**

Thank you for the opportunity to present our views on this bill.

Sincerely,

S&M Sakamoto, Inc.



Dennis M. Ideta  
Senior Vice President



# ***SAH - Subcontractors Association of Hawaii***

***1188 Bishop St., Ste. 1003\*\*Honolulu, Hawaii 96813-2938***

***Phone: (808) 537-5619 ✦ Fax: (808) 533-2739***

February 7, 2012

Testimony To: Senate Committee on Public Safety, Government Operations,  
and Military Affairs  
Senator Will Espero, Chair

Presented By: Tim Lyons  
President

Subject: S.B. 2413 – RELATING TO PROCUREMENT

Chair Espero and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we oppose this bill as it is currently written. The Subcontractors Association of Hawaii is composed of the following nine separate and distinct subcontracting organizations which include:

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

This bill strikes at the very heart of subcontractors. At present, subcontractors that are to be used on a job are listed by the general contractor when the prime submits their bid. This provides fair notice to everyone of who the subcontractors are that will be employed on a certain project. This bill would seem to say that that requirement will exist only if the contract is in excess of a half a million dollars and if the work performed by a particular sub-trade is in excess of twenty-five thousand dollars.

Subcontractor listing is currently required on all state and county jobs with the exception of some UH jobs, an exemption we STRONGLY OPPOSE. This experiment with the UH has not gone well with contractors left in the dark as to whether their price was used or whether they were successful in gaining the contract. Additionally, there have been rumors, although very difficult to substantiate, of bid-shopping by general contractors. Typically, this occurs by the contractor playing one subcontractor off the other. In general competition, that is OK but, when using a low bid system for public works, it is not.

One of the larger objections to bid-shopping has been addressed in this bill which is that seventy-five percent (75%) of the savings generated by substituting a different contractor than the one used to calculate the bid, would be refunded to the purchasing agency. We are not sure how this could possibly work. In other words, if I bid \$100,000.00 and \$10,000.00 of that was from a plumbing subcontractor who I was going to use but then I changed my mind because I found someone else for \$8,000.00, it would appear that the agency would have already determined that I am the low bidder at \$100,000.00. I am still going to get a \$100,000.00 contract. The agency is not going to be in a position to reduce it by \$2,000.00 since I have already been awarded the contract for \$100,000.00.

Based on the above and the fact that we are not sure what the intent of this bill is. We oppose it.

Thank you.



Via E-mail: [PGMTestimony@capitol.hawaii.gov](mailto:PGMTestimony@capitol.hawaii.gov)

February 6, 2012

TO: HONORABLE SENATORS WILL ESPERO, CHAIR, MICHELLE KIDANI,  
VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON  
PUBLIC SAFETY, GOVERNMENT OPERATIONS AND MILITARY  
AFFAIRS

SUBJECT: **STRONG OPPOSITION TO S.B. 2413, RELATING TO PROCUREMENT.**  
Requires solicitations for procurement of construction to require offerors to  
list subcontractors if the value of the contract is in excess of \$500,000 and  
the work to be performed by the subcontractor is in excess of \$25,000.  
Allows substitution of subcontractors if 75% of saving resulting from the  
substitution are refunded to the purchasing agency.

HEARING

DATE: Tuesday, February 7, 2012  
TIME: 2:45 PM  
PLACE: Conference Room 224

Dear Chair Espero, Vice Chair Kidani and Members of the Committee:

Nordic PCL Construction, Inc. **strongly opposes** the passage of S.B. 2413, Relating to Procurement because it will likely make bid protests increase due to the proposed subcontractor listing amendments. Although this bill purports to promote savings for the state in Section 1 with a proposed 75% cost savings from the substitution of a subcontractor to be returned to the purchasing agency, it will instead have a much different effect due to the increased likelihood of bid protests that would be permissible under the proposed language.

Among other changes, this bill inserts the "subcontractor listing" requirement for low-bid procurement only (HRS Section 103D-302(b)), into section 103D-303 involving Competitive Sealed Proposals. Among other uses, section 103D-303 governs design-build procurements and other "best value" solicitations.

Nordic PCL Construction, Inc. believes that the current subcontractor listing requirement for low-bid procurements is the single most used source of protests in construction procurement. Thereby causing procurement agencies, not only to spend its valuable resources to handle the protests, but also, resulting in delays in delivering projects out



Honorable Will Espero Chair & Honorable Michelle Kidani, Vice Chair  
Senate Committee on Public Safety, Government Operations, and Military Affairs  
February 6, 2012  
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to the construction industry work force in a timely manner. In many cases, awards based on bid-listing protests have gone to bidders with a higher bid price to the detriment of the taxpayers. Adding this to another procurement source would aggravate the problem as well as be impractical to implement under many competitive sealed proposal solicitations.

For example, in design-build solicitations, bid submissions are based on other than complete designs for a project where bidders have not yet obtained firm and reliable proposals from subcontractors. It would be impractical for bidders to name subcontractors for these solicitations. Most importantly, it would add yet another source of bid protests that hinders the State's efforts to stimulate the economy by quickly delivering construction projects out to the work force.

The bill also adds a requirement to include the "location of the place of business" of each subcontractor/joint contractor listed. Besides adding another burden on bidders trying to provide its best price proposal to the State just before it is due, this added requirement would be another source of bid protests by disgruntled unsuccessful bidders trying to knock out the low bidder.

The bill further adds a provision permitting substitution of subcontractors listed in a bid proposal under certain conditions. Though creditable in its intent, those provisions are impractical to implement, puts another burden on procuring agencies to implement, and adds another basis for protests and resultant procurement delays.

**Accordingly, Nordic PCL Construction, Inc. strongly opposes H.B. 2413 and recommends that the bill be held in the committee.**

Thank you for the opportunity to present our views on this bill.

Yours truly,

NORDIC PCL CONSTRUCTION, INC.

Glen Kaneshige, President