



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

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Executive Director

January 31, 2014

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Local 221

Honorable Representative Clift Tsuji, Chair
Honorable Representative Gene Ward, Vice Chair
Members of the Committee on Economic Development and Business
Hawaii State Capital
415 South Beretania Street
Honolulu, HI 96813

RE: **IN OPPOSITION** TO HB2175 RELATING TO PROCUREMENT
Hearing: Tuesday, February 4, 2014, 8:30 a.m. Conference Room 312

Honorable Chair, Vice Chair and Committee Members;

The Hawaii Building & Construction Trades Council, AFL-CIO is a chartered member of the Building and Construction Trades Department, AFL-CIO first organized in 1908 and comprised of 16 out of 17 construction trade unions with 386 state, local and provincial councils in the United States and Canada and an estimated 15,000 members locally. Our primary mission is to provide employment opportunities and living wages for many of Hawaii's working men and women in the construction industry.

The Council **STRONGLY OPPOSES** HB2175, which eliminates the requirement that construction bids for public works projects, submitted under the competitive sealed bid process, list potential joint contractors and subcontractors.

The current sub listing requirement is specifically intended to prevent and discourage the known practice of bid shopping and bid peddling.

HB2175 alleges that..."public works projects are often delayed due to bid protests by the non-lowest bidders challenging technical mistakes in the lowest bidder's proposal...resulting in projects that are delayed, funding lapses, and increases to final project costs due to inflation", and further that, "many recent bid protests have been based solely on subcontractor listing and licensing issues, causing major delays and cost increases for public works.

A recent analysis of actual bid protests related to state construction projects procured by competitive sealed bid for public works projects indicate this statement to be false and misleading. Of the twelve protests reported between mid-year 2012 to mid-year 2013, (3) were not attributed to the sub listing requirement, (2) were legitimate protests that were upheld by the procuring agency, (2) were protested by the 'rejected LOW BIDDER' and upheld by the procuring agency and (5) were actually related to the sub listing requirement.

Of the (5) protests that were related to sub listing, the average adjudication time was 16.6 working days from the date protest was received and time stamped with the longest period being 21 working days and the shortest period being 10 working days.

HB2175 goes on further to state, "Often, due to the complexity of the laws regarding contractor licenses under chapter 444, HRS; bidders and subcontractors sometimes misunderstand the licensing requirements."

Currently, there has been introduced HB2383 and SB2911 which attempts to clarify these complex laws and misunderstandings by requiring that the procuring agency include in the bid specifications and/or documents, all the necessary contractor licenses required to perform the work on the project. This would in effect, eliminate any confusion and drastically reduce the protests allegedly related to sub listing.

Lastly, HB2175 states that the federal government does not require the listing of subcontractors on any bid proposal.

I would like to point out the recent introduction (Congresswoman Carolyn B. Maloney of New York) and referral to committee for further consideration by the 113th Congress, H.R.1942, cited as the Construction Quality Assurance Act of 2013. This Bill is described as to assure the quality and best value with respect to Federal construction projects prohibiting the practice known as bid shopping.

H.R. 1942 goes on further to state, "Listing of major subcontract bids in the prime contractor's sealed bid by agencies will effectively stem the detrimental and inequitable practices of bid shopping and bid peddling on direct Federal construction contracts that are detrimental to the taxpayers' interest in Government procurement transparency, sound public contract administration, and successful construction project completion."

Further, H.R. 1942 states, "Agencies will receive better project performance, by restoring integrity to the low-bid selection system for both prime contractors and major subcontractors, as abusive selection procedures often lead to greater project disputes, claims, changes, product and material substitutions, and in some cases even contractor defaults...again, all to the detriment of the agency program, the project, and the taxpayers generally. Restoring equitable safeguards in the low-bid system will assure that agency practice will conform to the highest standards adhered to by industry professionals and contractor associations, and will reflect best practices followed by a great many other public procurement systems nationally and internationally."

We respectfully urge your committee to HOLD HB2175 as it serves to directly undermine the very core policies that ensure equitable use of taxpayer dollars and transparent government.

SAH - Subcontractors Association of Hawaii

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

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

February 4, 2014

Testimony To: House Committee on Economic Development & Business
Representative Clift Tsuji, Chair

Presented By: Tim Lyons
President

Subject: H.B. 2175 - RELATING TO PROCUREMENT

Chair Tsuji and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. SAH is composed of nine separate and distinct subcontracting organizations including:

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

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

We all oppose eliminating the subcontractor listing clause.

Look at the importance of this section. You need to know that the subcontractor listing clause is in our state law, along with many other states who have the same law, to prevent the underhanded practice of "bid shopping". "Bid shopping" is a prevalent practice and will thrive without a subcontractor listing clause and to no one's benefit except the prime contractor.

When a job comes up for bid, it is the general contractor's responsibility to obtain bid quotes for the various specialty work that will be performed on the job. He puts those together, along with his price and submits one price. After the job is awarded, it can be extremely profitable for the general contractor to go back to each and every one of those subcontractors and tell them that they can get the job if they will do it for \$10,000 or \$50,000 less than what they originally quoted. The subcontractor is in a subservient position and can be forced to say, "Okay". The problem here is that the difference in those bid amounts do not go in favor of the state or the taxpayer but, directly into the general contractor's pocket. Without a subcontractor listing clause, bidders are very reluctant to submit bids to any general contractor or prime contractor that they do not know or have not worked with before. Because that is often the case, competition is lessened, bid shopping is enhanced, the state gets poor workmanship and the subcontractor gets the short end.

We understand that there have been problems with the subcontractor listing law on occasion and one would certainly think that after a while, those who deal with it would feel that this is a very important qualifying section and they should be sure that they comply with it. Protests can be a delaying factor

but it was only in 2012 that we enacted a requirement for protestors to "put their money where their mouth is", and post a forfeitable bond. The goal was to stop frivolous protests. Let the law work!

Additionally, although protests are claimed to be the cause, in reality it is often times the incompetency of the general or his staff or a lack of knowledge of the various sub trades. A protest filed for an error on the part of the general (example: no sub listed) is not the fault of the sublisting clause; it is the fault of the general.

Based on the above, this bill should be held.

Thank you.

Testimony of Glenn Ida
Representing
The Plumbers and Fitters United Association, Local 675
1109 Bethel St. Lower Level
Honolulu, Hi. 96813

Rep. Clift Tsuji, Chair
Rep. Gene Ward, Vice-Chair
Committee on Economic Development and Business
Tuesday, 2-4-2014
8:30 AM, Room 312

Re: Strong Opposition of HB2175, Relating to Procurement.

Aloha Chair Tsuji, Vice-Chair Ward and Members of the Committee,

My name is Glenn Ida representing the 2000 active members and retirees of the Plumbers and Fitters UA, Local 675. Local 675 is an affiliate of the Hawaii Building and Construction Trades Council.

Local 675 strongly opposes HB 2175 which eliminates the requirement that construction bids for public works projects, submitted under the competitive sealed bidding process, list potential joint contractors and subcontractors.

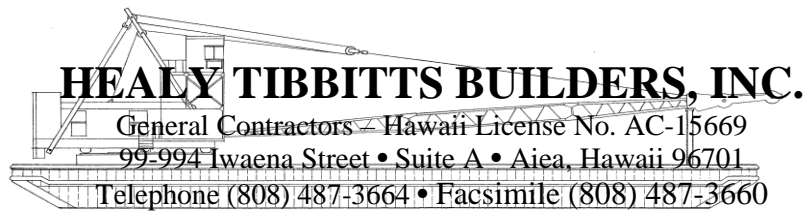
We believe that the current provision of listing of the joint and subcontractors has ensured the fair and equitable protections of our work through the sealed bid procurement process. Elimination of the sub-list may expose subcontractors to the practice of bid shopping.

Therefore Local 675 strongly opposes HB 2175.

Thank you for this opportunity to testify.

Mahalo,

Glenn Ida
808-295-1280



SENT VIA E-MAIL: EDBtestimony@capitol.hawaii.gov

February 4, 2014

TO: HONORABLE CLIFT TSUJI, CHAIR, HONORABLE GENE WARD, VICE CHAIR, COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS

SUBJECT: SUPPORT OF H.B. 2175, RELATING TO THE STATE BUILDING CODE. Eliminates the requirement that construction bids for public works projects, submitted under the competitive sealed bidding process, list potential joint contractors and subcontractors.

HEARING

DATE: Tuesday, February 4, 2014

TIME: 8:30 a.m.

PLACE: Capitol Room 312

Dear Chair Tsuji, Vice Chair Ward and Members of the Committee:

Healy Tibbitts Builders, Inc. is a general contractor in the State of Hawaii and has been actively engaged in construction work in Hawaii since the early 1960's.

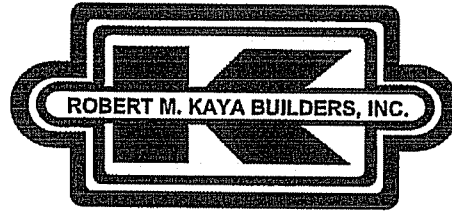
Healy Tibbitts Builders, Inc. is **in support** of H.B. 2175 that proposes to eliminate the listing of joint contractors and subcontractors from construction bids for public works projects that usually use a low-bid system. The Model Code and federal contracts do not require subcontractor listing.

In public work contracts current law requires the bidding contractor to list all subcontractors to be employed on public works projects unless the prime contractor has the required specialty license and will do the work himself. Some projects require the use of over twenty subcontractors. The subcontractor listing requirement has resulted in numerous protests alleging that the bidder failed to list a required sub specialty contractor or that the listed subcontractor did not possess the required license and was therefore, not qualified to perform the work.

For these reasons, Healy Tibbitts Builders, Inc. supports H.B. 2175.

Sincerely,

Richard A. Heltzel
President



525 Kokea Street, Bldg. B-3 • Honolulu, Hawaii 96817 • Phone: (808) 845-6477 • Fax: (808) 845-6471 • E-mail: rmkaya@hawaii.rr.com
Building and Improvement Specialist Since 1937
Serving Hawaii for Over a Half Century

February 3, 2014

TO: HONORABLE CLIFT TSUJI, CHAIRMAN
HONORABLE GENE WARD, VICE CHAIRMAN
COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS

SUBJECT: SUPPORT OF H.B. 2175, RELATING TO THE STATE BUILDING CODE.
(Eliminates the Requirement that Construction Bids for Public Works Projects, Submitted under the Competitive Sealed Bidding Process, List Potential Joint Contractors and Subcontractors)

Dear Chairman Tsuji, Vice Chairman Ward and Members of the Committee,

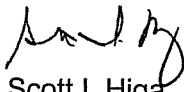
ROBERT M. KAYA BUILDERS, INC. is **IN SUPPORT** of H.B. 2175 that proposes to eliminate the listing of joint contractors and subcontractors from construction bids for public works projects that usually use a low-bid system. The Model Code and federal contracts do not require subcontractor listing.

In public work contracts current law requires the bidding contractor to list all subcontractors to be employed on public works projects unless the prime contractor has the required specialty license and will do the work himself. Some projects require the use of over twenty subcontractors. The subcontractor listing requirement has resulted in numerous protests alleging that the bidder failed to list a required sub specialty contractor or that the listed subcontractor did not possess the required license and was therefore, not qualified to perform the work.

For these reasons, ROBERT M. KAYA BUILDERS, INC. supports H.B. 2175.

Yours truly,

ROBERT M. KAYA BUILDERS, INC.


Scott I. Higa
President

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

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JW, Inc.

Ryan Engle

Bays Lung Rose & Holma

Stephen Hanson

simplicityHR by ALTRES

Testimony to the House Committee on Economic Development & Business

Tuesday, February 4, 2014

8:30 a.m.

State Capitol - Room 312

SUBJECT: H.B. 2175 - Relating to Procurement

Dear Chair Tsuji, Vice-Chair Ward, and members of the Committee:

My name is Gladys Marrone, Government Relations Director 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 opposes H.B. 2175.

H.B. 2175 proposes to eliminate the requirement that construction bids for public works projects, submitted under the competitive sealed bidding process, list potential joint contractors and subcontractors.

BIA-Hawaii is opposed to H.B. 2175 because: 1) a contracting officer may not be fully aware of exactly what the general contractor needs in order to fulfill the contract; 2) many subcontractor trades have overlapping qualifications, thus listing one license without the other qualified license will lead to an erroneous listing; and 3) not listing the accurate licenses required for the job will lead to more opportunities for bid protests, ultimately leading to delays and increasing the ultimate project costs to the State and taxpayers.

We appreciate the opportunity to express our **opposition** to H.B. 2175.

PLUMBING & MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII



Via Email

February 3, 2014

Representative Clift Tsuji
Committee on Economic Development and Business
House of Representatives
The Twenty-Seventh Legislature, Regular Session of 2014

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

GREGG S. SERIKAKU
EXECUTIVE DIRECTOR

Chair Tsuji, Vice Chair Ward, and Members of the Committee:

SUBJECT: HB2175 Relating to Procurement

My name is Gregg Serikaku, Executive Director of the Plumbing and Mechanical Contractors Association of Hawaii, and our Association represents plumbing, air conditioning, refrigeration, and fire sprinkler contractors in Hawaii.

The Association for which I speak is **strongly opposed** to HB2175.

This bill proposes to eliminate the subcontractor listing and scope of work requirement on competitive sealed bid public works projects procured under HRS 103D-302, which would prove to be extremely detrimental to specialty contractors because it encourages prime contractors to utilize the unethical practice of "bid shopping".

Bid shopping occurs when the prime contractor is awarded the project as the low bidder, then subsequently proceeds to "shop" the bids of the subcontractors in order to lower costs and make an additional profit, none of which goes back to the customer. In most cases, other subs will provide a lower price because: 1. they did not incur the significant time and expense of putting together a price, or 2. because they need the work, or 3. that they fear being "black-balled" on future projects. This all comes at the expense of the original subcontractors who have invested significant time and money to provide the fair and complete bids used by the prime contractor in the award price.

Furthermore, many times bid shopping results in the prime contractor using subcontractors that have not carefully analyzed the costs and logistics of a project, and who end up cutting corners to meet their budget, in turn producing low quality workmanship, causing delays or even defaulting on their work, which ultimately costs the state more money to correct.

The supporters of this bill will point to the general sublisting requirement as the reason for delays and protests in the procurement process, however, there are really many other factors outside of procurement which may be the true cause of delays and protests, such as excessive license classes, outdated insurance, administrative delays, vague bid specifications, etc. Improvements in any these other areas would certainly help to streamline the procurement process without impacting the sublisting requirement.

In fact, the sublisting requirement has actually proven beneficial in that it has prevented unlicensed or improperly licensed contractors from performing work for which they are not qualified to undertake.

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 result in lower quality workmanship and create severe delays during construction, potentially costing the State of Hawaii more money in the long run.

We therefore respectfully urge the committee to hold this bill.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Gregg S. Serikaku". The signature is written in a cursive style with a large, stylized initial "G".

Gregg S. Serikaku
Executive Director



Sent Via E-Mail: EDBtestimony@capitol.hawaii.gov
Via Fax: (808) 586-6421

February 3, 2014

TO: HONORABLE CLIFT TSUJI, CHAIR, HONORABLE GENE WARD, VICE CHAIR, COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS

SUBJECT: SUPPORT OF H.B. 2175, RELATING TO THE STATE BUILDING CODE. Eliminates the requirement that construction bids for public works projects, submitted under the competitive sealed bidding process, list potential joint contractors and subcontractors.

HEARING

DATE: Tuesday, February 4, 2014
TIME: 8:30 a.m.
PLACE: Capitol Room 312

Dear Chair Tsuji, Vice Chair Ward and Members of the Committee,

LYZ, Inc. is **in support** of H.B. 2175 that proposes to eliminate the listing of joint contractors and subcontractors from construction bids for public works projects that usually use a low-bid system. The Model Code and federal contracts do not require subcontractor listing.

In public work contracts current law requires the bidding contractor to list all subcontractors to be employed on public works projects unless the prime contractor has the required specialty license and will do the work himself. Some projects require the use of over twenty subcontractors. The subcontractor listing requirement has resulted in numerous protests alleging that the bidder failed to list a required sub specialty contractor or that the listed subcontractor did not possess the required license and was therefore, not qualified to perform the work.

For these reasons, **LYZ, Inc.** supports H.B. 2175.



James N. Kurita
Vice President/ Chief Operating Officer

IRON WORKERS STABILIZATION FUND

January 31, 2014

FAX - 586-6421

Cliff Tsuji, Chair
 Committee on Economic Development & Business
 House of Representatives
 State Capitol - Room 402
 Honolulu, HI 96813

HB 2175, Relating to Procurement

Hearing Date - February 4, 2014, 8:30 a.m.
 Hearing Room - Conference Room 312

Dear Chair Tsuji & Members of the Committee:

HRS Section 103D-302 requires that construction bids for public works projects, submitted under the competitive sealed bidding process, list potential joint contractors and subcontractors. There is a good reason for this requirement - to "protect the general public against dishonest, fraudulent, unskillful or unqualified contractors." Jones v. Phillipson, 92 Hawai'i 117 (1999). In accordance with this principal, the stated purpose of HRS chapter 444 is "the protection of the general public." Okada Trucking Co., Ltd. V. Board of Water Supply, et al., 97Hawaii 459 (2000). The legislature has stated that HRS chapter 444 was "enacted, in part, to ensure the health and safety of the public by requiring that contractors possess a minimum level of expertise, experience and training." Jones, 92 H at 125.

How are the contracting agencies, DOE, DOT, DAGS, etc. and the general public, to know whether the general contractor will be utilizing skillful, qualified and experienced subcontractors if they are not listed on the bids? The amendment called for in HB 2175 would be in clear contravention of HRS chapter 444 and the Supreme Court cases that have been decided in the Jones and Okada cases as set forth above.

This measure is just another attempt by the general contractors to "whole cheese" all contracting work without using subcontractors. Hundreds of subcontractors would go out of business, and, thousands of unionized tradesmen would suffer a similar fate.

Based on the foregoing, we strongly oppose HB 2175.

Respectfully submitted,
 Ironworkers Stabilization Fund

94-497 UKEE STREET ■ WAIPAHU, HAWAII 96797 ■ (808) 671-4344





S & M SAKAMOTO, INC.
GENERAL CONTRACTORS

Sent Via E-Mail: EDBtestimony@capitol.hawaii.gov
Via Fax: (808) 586-6421

February 4, 2014

TO: HONORABLE CLIFT TSUJI, CHAIR, HONORABLE GENE WARD, VICE
CHAIR, COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS

SUBJECT: SUPPORT OF H.B. 2175, RELATING TO THE STATE BUILDING CODE.
Eliminates the requirement that construction bids for public works projects,
submitted under the competitive sealed bidding process, list potential joint
contractors and subcontractors.

HEARING

DATE: Tuesday, February 4, 2014
TIME: 8:30 a.m.
PLACE: Capitol Room 312

Dear Chair Tsuji, Vice Chair Ward and Members of the Committee,

S & M Sakamoto, Inc. is in support of H.B. 2175 that proposes to eliminate the listing of joint contractors and subcontractors from construction bids for public works projects that usually use a low-bid system. The Model Code and federal contracts do not require subcontractor listing.

In public work contracts current law requires the bidding contractor to list all subcontractors to be employed on public works projects unless the prime contractor has the required specialty license and will do the work himself. Some projects require the use of over twenty subcontractors. The subcontractor listing requirement has resulted in numerous protests alleging that the bidder failed to list a required sub specialty contractor or that the listed subcontractor did not possess the required license and was therefore, not qualified to perform the work.

For these reasons, **S & M Sakamoto, Inc.** supports H.B. 2175.

Very truly yours,
S & M Sakamoto, Inc.


Gerard Sakamoto
President

500 ALAKAWA STREET, SUITE 220E • HONOLULU, HI 96817 • PH. (808) 456-4717 • FAX (808) 456-7202
CONTRACTOR LICENSE NO. BC-3641



International Brotherhood of Electrical Workers
LOCAL UNION NO. 1186 • Affiliated with AFL-CIO

1935 HAU STREET, ROOM 401 • HONOLULU, HI 96819-5003
TELEPHONE (808) 847-5341 • FAX (808) 847-2224

February 3, 2014

VIA FAX 586 6421

TO: HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS
For Hearing on Tuesday, February 4, 2014, at 8:30 a.m., in Conf. Rm. 312

RE: TESTIMONY IN STRONG OPPOSITION OF HB 2175

Honorable Chair Tsuji, Vice Chair Ward, and Committee Members,

The **International Brotherhood of Electrical Workers Local Union 1186** represents over 3,400 members working in electrical construction, telecommunications, and with Oceanic Cable. Our members include civil service employees at Pearl Harbor, Hickam, Kaneohe, and military facilities throughout Hawaii. IBEW Local 1186 also represents over 110 signatory electrical contracting companies that perform most of the electrical work in our state.

We strongly oppose HB 2175. Removing the subcontractor listing from government projects will cause problems for the state by increasing shoddy workmanship and lowering the quality of projects paid for with public funds by encouraging bid shopping.

Removing the listing will also not decrease procurement delays as this bill intends, and will create more serious problems. **Thank you for giving us this opportunity to testify in strong opposition of HB 2175.**

Mahalo and aloha,

Damien Kim
Business Manager – Financial Secretary
International Brotherhood of
Electrical Workers, Local Union 1186



1099 ALAKEA STREET, SUITE 1560
HONOLULU, HI 96813
TELEPHONE: (808) 541-9101
FAX: (808) 541-9108

Sent Via E-Mail: EDBtestimony@capitol.hawaii.gov
Via Fax: (808) 586-6421

February 3, 2014

TO: HONORABLE CLIFT TSUJI, CHAIR, HONORABLE GENE WARD, VICE
CHAIR, COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS

SUBJECT: SUPPORT OF H.B. 2175, RELATING TO THE STATE BUILDING CODE.
Eliminates the requirement that construction bids for public works projects,
submitted under the competitive sealed bidding process, list potential joint
contractors and subcontractors.

HEARING

DATE: Tuesday, February 4, 2014
TIME: 8:30 a.m.
PLACE: Capitol Room 312

Dear Chair Tsuji, Vice Chair Ward and Members of the Committee,

Nordic PCL Construction, Inc. is **in support** of H.B. 2175 that proposes to eliminate the listing of joint contractors and subcontractors from construction bids for public works projects that usually use a low-bid system. The Model Code and federal contracts do not require subcontractor listing.

In public work contracts current law requires the bidding contractor to list all subcontractors to be employed on public works projects unless the prime contractor has the required specialty license and will do the work himself. Some projects require the use of over twenty subcontractors. The subcontractor listing requirement has resulted in numerous protests alleging that the bidder failed to list a required sub specialty contractor or that the listed subcontractor did not possess the required license and was therefore, not qualified to perform the work.

For these reasons, **Nordic PCL Construction, Inc.** supports H.B. 2175.

Yours truly,

NORDIC CONSTRUCTION, INC.

Glen Kaneshige
President



ELECTRICAL CONTRACTOR'S ASSOCIATION OF HAWAII

NECA Hawai'i Chapter

1286 Kalani Street, Suite B-203

Honolulu, Hawai'i 96817

PH: (808) 847-7306

FX: (808) 841-8096

Email: ecah@ecahi.com



February 3, 2014

To: House Committee on Economic Development & Business
The Honorable Representatives Clift Tsuji and Gene Ward, Chairs

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

Subject: HB 2175 Relating to Procurement

Notice of Hearing

Date: Tuesday, February 4, 2014
Time: 8:30 AM
Place: House Conference Room 312
State Capitol
415 South Beretania Street

Dear Chairs Tsuji, Ward and Committee members:

The Electrical Contractors Association of Hawaii (ECAH) is a non-profit association consisting of electrical contractors doing business in the State of Hawaii. ECAH is the Hawaii Chapter of the National Electrical Contractors Association (NECA). ECAH **strongly opposes** the intent and purpose of HB 2175.

The intent and purpose of HB 2175 to eliminate the subcontractor listing is flawed and is not in the best interest of tax payers in general. Although we agree that there are bid protest that often delay and increases project costs, to place the entire cause of these protests on subcontractor listings is simply not true as depicted in Section 1 of the bill. In a meeting with former Procurement Officer, Aaron Fujiki on bid protest, he revealed that less than 6% of protests are caused by subcontractor listing on public works jobs.

The third paragraph of Section 1 of this bill states that the time constraints between bid submissions of subcontractors and the bid submission deadline and licenses requirements are often misunderstood are not the results of requiring the subcontractor listing but the failure of the bidding prime contractor from submitting a complete bid and conducting its due diligence.

The purpose of having the subcontractor listing is to prevent bid shopping by the prime contractor, a practice that only enriches the prime contractor at the expense of the subcontractors. The procurement office and the tax payers do not receive any benefits as the practice of bid shopping takes place after

the bid is submitted and the prime contractor gains profits over and above the original bid submission. Bid shopping is an unethical business practice that threatens the integrity of the competitive bid system that works to ensure all customers and contractors receive accurate information and fair consideration.

In addition, SCR 92, SD2 was passed last session to establish a task force to study the State's Procurement Code. A report of its findings and recommendations to the legislature by the task force is due before the start of the 2015 legislative session. HB 2175 circumvents the intent and purpose of SCR92 and prematurely attempts to make changes to the State Procurement Code while a full study is being carried out by the task force. The proper action at this time is to wait for the final report from the task force.

Based on the above, ECAH **strongly opposes** the passage of HB 2175 and urge the committee to stop this bill from moving forward.

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

List of Licenses

"A" License

1. C-3 asphalt, paving and surfacing;
2. C-9 cesspool;
3. C-10 scaffolding;
4. C-17 excavating, grading and trenching;
5. C-24 building, moving and wrecking;
6. C-31 cement concrete;
7. C-32 ornamental guardrail and fencing;
8. C-35 pile driving, pile and caisson drilling and foundation;
9. C-37a sewer and drain line;
10. C-37b irrigation and lawn sprinkler systems;
11. C-38 post tensioning;
12. C-43 sewer, sewage disposal, drain and pipe laying
13. C-49 swimming pool;
14. C-56 welding;
15. C-57a pumps installation;
16. C-57b injection wells;
17. C-61 solar energy systems

"B": License

1. C-5 cabinet, millwork and carpentry remodeling and repairs;
2. C-6 carpentry;
3. C-10 scaffolding;
4. C-12 drywall;
5. C-24 building moving and wrecking;
6. C-25 institutional and commercial equipment;
7. C-31a cement concrete;
8. C-32a wood and vinyl fencing;
9. C-42a aluminum and other metal shingles;
10. C-42b wood shingles and wood stakes

WARRIOR

CONTRACTING, LLC

Sent Via E-Mail: EDBtestimony@capitol.hawaii.gov

Via Fax: (808) 586-6421

February 4, 2014

TO: HONORABLE CLIFT TSUJI, CHAIR, HONORABLE GENE WARD, VICE CHAIR, COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS

SUBJECT: SUPPORT OF H.B. 2175, RELATING TO THE STATE BUILDING CODE. Eliminates the requirement that construction bids for public works projects, submitted under the competitive sealed bidding process, list potential joint contractors and subcontractors.

HEARING

DATE: Tuesday, February 4, 2014

TIME: 8:30 a.m.

PLACE: Capitol Room 312

Dear Chair Tsuji, Vice Chair Ward and Members of the Committee,

Warrior Contracting, LLC is a service-disabled, veteran-owned small business general contractor and is **in support** of H.B. 2175 that proposes to eliminate the listing of joint contractors and subcontractors from construction bids for public works projects that usually use a low-bid system. The Model Code and federal contracts do not require subcontractor listing.

In public work contracts current law requires the bidding contractor to list all subcontractors to be employed on public works projects unless the prime contractor has the required specialty license and will do the work himself. Some projects require the use of over twenty subcontractors. The subcontractor listing requirement has resulted in numerous protests alleging that the bidder failed to list a required sub specialty contractor or that the listed subcontractor did not possess the required license and was therefore, not qualified to perform the work.

For these reasons, Warrior Contracting, LLC **supports** H.B. 2175.

Sincerely,



Denny Watts
Executive Vice President

Las Vegas
3443 Neeham Suite 8
North Las Vegas, NV 89030
P: (702) 283-1859
F: (702) 220-7067
NV #0074622, #0075632

Honolulu
735 Bishop St. #401
Honolulu, HI 96813
P: (808) 260-1117
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HI ABC #33154



**International Union of Painters and Allied Trades
District Council 50**

2240 Young Street
Honolulu, HI 96826

Phone
808.941.0991

Fax
808.955.9091

Email
info@dc50.org

Website
www.dc50.org

PAINTERS
808.941.0991

GLAZIERS
ARCHITECTURAL
AND GLASS/METAL
WORKERS
808.946.3329

CARPET LINOLEUM
AND SOFT TILE
808.942.3988

DRYWALL TAPERS
FINISHERS
808.848.7766

TO THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS

TIME/DATE: 9:00 A.M., TUESDAY, FEBRUARY 4, 2014

TESTIMONY IN OPPOSITION TO HOUSE BILL NO. 2175
"RELATING TO PROCUREMENT"

TO THE HONORABLE CLIFT TSUJI, CHAIR
AND MEMBERS OF THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT
AND BUSINESS:

The International Union of Painters and Allied Trades, District Council 50, appreciates the opportunity to testify in strong opposes to House Bill 2175. My name is Lorna Woo, Director of Governmental Affairs, International Union of Painters and Allied Trades, District Council 50 (IUPAT, DC50), an organization comprised of five (5) local unions – the Painters, Local Union 1791; the Glaziers Architectural and Glass Metal Workers, Local Union 1889; the Carpet Linoleum and Soft Tile, Local Union 1926; the Drywall Tapers Finishers, Local Union 1944; and the Pearl Harbor Specialty Workers, Local Union 1941, representing approximately 2000 members throughout the State of Hawaii.

IUPAT, DC50, strongly opposes House Bill No. 2175. This legislation proposes to eliminate the requirement to list joint contractors and /or subcontractors on competitive bids for public works projects. Currently, this listing requirement specifically prevents the bidder to bid shop. When a contractor proposes a bid for a project, the current practice of listing joint contractors and/or subcontractors allows

the department to scrupulously investigate the legitimacy of each contractor that could potentially be performing work on a project. This practice also allows the agency the ability to review a contractor's credentials and to confirm that the bidder possess the proper license, insurance, etc.

The law as it stands reaffirms the integrity of the bidders and safeguards procurement transparency when awarding bids on public works projects.

Thank you for the opportunity to testify in opposition to House Bill No. 2175, and I humbly request that this measure be HELD in committee.

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

TESTIMONY OF NELSON H. KOYANAGI, JR.
DIRECTOR OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
BEFORE THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS
Tuesday, February 4, 2014, 8:30 a.m., Conference Room 312

HOUSE BILL 2175, "RELATING TO PROCUREMENT"

Position: In Support

TO: The Honorable Clift Tsuji, Chair
and Members of the Committee on Economic Development & Business

The Department of Budget and Fiscal Services, City and County of Honolulu,
supports House Bill No. 2175, Relating to Procurement.

We agree that the majority of all bid protests received for construction projects are based solely on subcontractor listing and licensing issues. We also strongly agree that eliminating the HRS §103D-302 requirement for a subcontractor listing at time of bid submittal will significantly decrease the bid protests and delays the City is currently experiencing.

For the reasons stated above, the City respectfully requests that this bill be passed.

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 bfspurchasing@honolulu.gov.



Testimony of
GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
FORD N. FUCHIGAMI
RANDY GRUNE
AUDREY HIDANO
JADINE URASAKI

IN REPLY REFER TO:

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

February 4, 2014
8:30 a.m.
State Capitol, Room 312

H.B. 2175
RELATING TO PROCUREMENT

House Committee on Economic Development and Business

The Department of Transportation (DOT) **opposes** this bill which proposes to repeal the subcontractor listing requirement for public works construction Invitation for Bids (IFB).

The primary purpose of the subcontractor listing requirement is to prevent bid shopping and bid peddling. As adjudicated in *Okada Trucking*¹ (quoting *Hawaiian Dredging* (PCH-99-6 (August 9, 1999)), bid shopping, "is the use of the low bid already received by the general contractor to pressure other subcontractors into submitting even lower bids. Bid peddling, conversely, is an attempt by a subcontractor to undercut known bids already submitted to the general contractor in order to procure the job."

To allow general contractors to bid shop or to allow subcontractors to bid peddle would create an unfair government bidding environment, directly in conflict with the intent of the Procurement Code. Namely the HRS 103D-302(g) proviso, "[a]fter bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the public or to fair competition shall be permitted."

The Procurement Code was based in large part on the American Bar Association's Model Procurement Code for State and Local Government (Model Code). While the Model Code did not include a subcontractor listing requirement, the requirement existed under the Hawaii procurement laws in effect prior to the adoption of the Procurement Code (See *Okada Trucking, supra*).

Thank you for the opportunity to provide testimony.



February 3, 2014

TO: HONORABLE CLIFT TSUJI, CHAIR, HONORABLE GENE WARD, VICE
CHAIR, COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS

SUBJECT: SUPPORT OF H.B. 2175, RELATING TO THE STATE BUILDING CODE.
Eliminates the requirement that construction bids for public works
projects, submitted under the competitive sealed bidding process, list
potential joint contractors and subcontractors.

HEARING

DATE: Tuesday, February 4, 2014
TIME: 8:30 a.m.
PLACE: Capitol Room 312

Dear Chair Tsuji, Vice Chair Ward and Members of the Committee,

TOMCO CORP. is **in support** of H.B. 2175 that proposes to eliminate the listing of joint contractors and subcontractors from construction bids for public works projects that usually use a low-bid system. The Model Code and federal contracts do not require subcontractor listing.

In public work contracts current law requires the bidding contractor to list all subcontractors to be employed on public works projects unless the prime contractor has the required specialty license and will do the work himself. Some projects require the use of over twenty subcontractors. The subcontractor listing requirement has resulted in numerous protests alleging that the bidder failed to list a required sub specialty contractor or that the listed subcontractor did not possess the required license and was therefore, not qualified to perform the work.

For these reasons, **TOMCO CORP.** supports H.B. 2175.

500 Ala Kawa St., Suite #100A Honolulu, Hawaii 96817
Telephone #: (808) 845-0755 Fax #: (808) 845-1021
Lic# ABC 16941

Leonard K.P. Leong
Vice President

Sent Via E-Mail: EDBtestimony@capitol.hawaii.gov
Via Fax: (808) 586-6421

February 4, 2014

TO: HONORABLE CLIFT TSUJI, CHAIR, HONORABLE GENE WARD,
VICE CHAIR, COMMITTEE ON ECONOMIC DEVELOPMENT AND
BUSINESS

SUBJECT: SUPPORT OF H.B. 2175, RELATING TO THE STATE BUILDING
CODE. Eliminates the requirement that construction bids for public
works projects, submitted under the competitive sealed bidding
process, list potential joint contractors and subcontractors.



HEARING

DATE: Tuesday, February 4, 2014
TIME: 8:30 a.m.
PLACE: Capitol Room 312

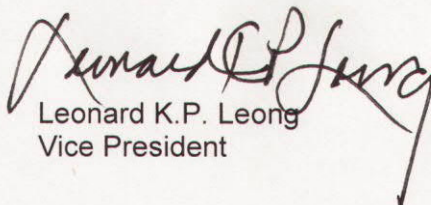
Dear Chair Tsuji, Vice Chair Ward and Members of the Committee,

Royal Contracting Co., Ltd. is **in support** of H.B. 2175 that proposes to eliminate the listing of joint contractors and subcontractors from construction bids for public works projects that usually use a low-bid system. The Model Code and federal contracts do not require subcontractor listing.

In public work contracts current law requires the bidding contractor to list all subcontractors to be employed on public works projects unless the prime contractor has the required specialty license and will do the work himself. Some projects require the use of over twenty subcontractors. The subcontractor listing requirement has resulted in numerous protests alleging that the bidder failed to list a required sub specialty contractor or that the listed subcontractor did not possess the required license and was therefore, not qualified to perform the work.

For these reasons, **Royal Contracting Co., Ltd.** supports H.B. 2175.

Sincerely,



Leonard K.P. Leong
Vice President