

STATE OF HAWAII
STATE PROCUREMENT OFFICE
P.O. Box 119
Honolulu, Hawaii 96810-0119
Telephone: (808) 587-4700
e-mail: state.procurement.office@hawaii.gov
<http://spo.hawaii.gov>

TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
CONSUMER PROTECTION AND COMMERCE
FEBRUARY 11, 2015, 2:30 P.M.

HB 550
RELATING TO PROCUREMENT

Chair McKelvey, Vice-Chair Woodson, and members of the committee, thank you for the opportunity to submit testimony on HB 550. The State Procurement Office (SPO) opposes the proposed bill and provides the following comments for the committee's consideration.

Senate Concurrent Resolution 92, Senate Draft 2 of the Twenty-Seventh Legislature, 2013 requested the Comptroller establish a Task Force to study the State procurement code and identify amendments that would increase economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects. The Task Force consisted of procurement and engineering staff from various State and County agencies, representatives of the construction industry, trades, and unions and other State construction procurement stakeholders. Among the various issues suggested for consideration was the issues surrounding the subcontractor listing requirement set forth in the Hawaii Revised Statutes (HRS) Section 103D-302(b) you.

The SPO refers the committee to the data collected, discussions, and findings set forth in the Subcontractor Listing Requirement portion of the Procurement Task Force Report. As the report reflects, the subcontractor listing requirement was a source of great contention for the Task Force with numerous differences is the overall cost-benefit analysis of this issue. A vote of the Task Force members on whether to repeal or maintain the requirement resulted in a very close vote and no consensus was reached. SPO took particular notice to the data collected on the impact the requirement had on construction costs. As the report reflects, the impact of the requirement in displacing the apparent low-bidder, due to an error or omission in the listing, with the second low bidder was quite rare, involving approximately 1% of construction projects awarded in fiscal years (FY) 2013 and 2014. The total cost difference overall was approximately 0.06% in FY 2013 and 0.34% in FY 2014.

Based on the lack of consensus among stakeholders and the de minimus cost impact of the requirement overall SPO opposes any change to the subcontractor listing at this time.

Thank you.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

2015 OFFICERS

PRESIDENT
RICHARD HOBSON, JR.
GENTRY HOMES, LTD.

PRESIDENT-ELECT
CRAIG WASHOFSKY
SERVCO HOME & APPLIANCE
DISTRIBUTION

VICE PRESIDENT
EVAN FUJIMOTO
GRAHAM BUILDERS, INC.

TREASURER
GUY J. SHINDO
FIRST HAWAIIAN BANK

SECRETARY
MICHAEL WATANABE
JW, INC.

SPECIAL APPOINTEE-BUILDER
PAUL D. SILEN
HAWAIIAN DREDGING
CONSTRUCTION CO, INC

SPECIAL APPOINTEE-BUILDER
MARK KENNEDY
HASEKO CONSTRUCTION
MANAGEMENT GROUP, INC.

SPECIAL APPOINTEE-ASSOCIATE
DEAN UCHIDA
SSFM INTERNATIONAL, INC.

IMMEDIATE PAST PRESIDENT
BRIAN K. ADACHI
BKA BUILDERS, INC.

CHIEF EXECUTIVE OFFICER
GLADYS MARRONE
BIA-HAWAII

2015 DIRECTORS

ANTHONY BORGE
RMA SALES

DOUGLAS E. PEARSON
CASTLE & COOKE HOMES
HAWAII, INC.

CHRIS CHEUNG
CC ENGINEERING &
CONSTRUCTION, INC.

CLIFTON CRAWFORD
C&J CONTRACTING, INC.

CURT KIRIU
CK INDEPENDENT LIVING BUILDERS

DWIGHT MITSUNAGA
DM PACIFIC, INC.

GARY T. OKIMOTO
HONOLULU WOOD TREATING

JACKSON PARKER
D.R. HORTON, SCHULER DIVISION

JENNIFER ANDREWS
COLDWELL BANKER PACIFIC
PROPERTIES

LILI SHINTANI
ALAN SHINTANI, INC.

MARK HERTEL
INTER-ISLAND SOLAR SUPPLY,
OAHU-MAUI-HAWAII-KAUAI

SARAH LOVE
BAYS LUNG ROSE & HOLMA

MAILING
P.O. BOX 970967
WAIPAHU, HAWAII
96797-0967

STREET
94-487 AKOKI STREET,
WAIPAHU, HAWAII 96797
P 808.847.4666
F 808.440.1198
E INFO@BIAHAWAII.ORG

WWW.BIAHAWAII.ORG

Testimony to the House Committee on Consumer Protection & Commerce

Wednesday, February 11, 2015

2:30 p.m.

State Capitol - Conference Room 325

RE: HOUSE BILL NO. 550 RELATING TO PROCUREMENT

Dear Chair McKelvey, Vice-Chair Woodson, and members of the Committee:

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

BIA-Hawaii **supports the intent** of H.B. 550, which proposes to eliminate the subcontractor listing requirement in public works procurement of construction, while also prohibiting bid shopping and bid peddling. The proposed changes are more consistent with the Model Procurement Code and federal construction contracts which do not promote nor require subcontractors to be listed at time of bid. With regard to federal contracting, the absence of a subcontractor listing provides an opportunity to further small business participation after a prime contractor has been awarded.

Current law requires the bidding contractor to submit a list, at time of bid, of all subcontractors to be employed on public works projects, unless the prime contractor holds the required specialty license and will do the work himself. Projects sometimes require as little as one or two subcontractors, while other more complicated projects can easily require the use of over twenty-five subcontractors, depending on scope. The listing requirement has created more opportunity for bid errors by the prime contractors, with the over one hundred license classifications under the jurisdiction of the Contractors Licensing Board. Often, the subcontractor listing requirement results in a non-low bidder alleging that the apparent low bidder failed to list a required sub specialty contractor or that the listed subcontractor did not possess the required license to perform the work.

While proponents of the subcontractor listing argue that the listing requirement deters bid shopping or bid peddling, they fail to recognize that this requirement is triggering bidders to use the listing as a tool to find flaws in submitted low bids, thereby causing an inefficient bidding system and increasing costs to the taxpayer. In an effort to address proponents concerns, this measure also prohibits bid shopping and bid peddling and provides a venue for the subcontractor to raise their concern outside of the procurement process. This way, the procurement of public works does not need to be stalled due to a technical or inadvertent flaw.

Thank you for the opportunity to express our views on this matter.

IRONWORKERS STABILIZATION FUND

February 10, 2015

Angus McKelvey, Chair
Committee on Consumer Protection and Commerce
State House
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Date: February 11, 2015
Time: 2:30 p.m.
Place: Conference Room 325, State Capitol

Dear Honorable Chair McKelvey and Members of the Committee Consumer Protection and Commerce:

Re: Strongly Oppose for HB550– Relating to Procurement

We are in support for HB550 relating to Procurement. The purpose of this bill states that it wants to do away with Bid Shopping. However, the way the language reads it will not only hurt small businesses, but also will not save the state government monies. Most of our signatory companies will not bid for Federal Projects due to the fact that they do not have subcontractor listing and will not get the job.

It has also been shown that protest dealing with subcontractor listing has dropped tremendously due to the new bonding requirements for protest. It also has been shown that on average the jobs that has been protested has only taken less than one month to reconcile. Additionally, to ensure there is no bid shopping there is not enough resources to adequately monitor all the construction projects. This bill is mostly a self-reporting issue and the contractor themselves will need to state if they did bid shopping.

Consequently for these reasons we oppose this measure for the working men and women of Hawaii. Thank you for your time and consideration.

PLUMBING & MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII



PLUMBING AND 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 10, 2015

Representative Angus L.K. McKelvey, Chair
Committee on Consumer Protection and Commerce
House of Representatives
The Twenty-Eighth Legislature, Regular Session of 2015
State Capitol
Honolulu, HI 96813

Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

SUBJECT: H.B. 550 Relating to Procurement

My name is Gregg Serikaku. I am the Executive Director of the Plumbing and Mechanical Contractors Association of Hawaii.

The Association for which I speak is strongly opposed to H.B. 550.

There are numerous statements in the preamble of this bill which misrepresents the issues involved with the procurement of public works projects. Much like what has been extolled by the proponents of similar bills over the past several years, this bill mistakenly argues that the sublisting requirement has unnecessarily caused excessive and numerous protests which is claimed to have resulted in a substantial increase in the overall costs of projects awarded by various state agencies.

In order to address these claims, S.C.R. 92 SD2 (2013) created a task force to study these issues and to collect protest data from FYE 2012-2014 in order to determine the true extent of such protests and whether the protests were frivolous in nature or justified. The task force report to the Legislature, which includes the detailed findings, is being finalized and should be submitted soon.

We believe the results of the protest data collected by the task force will show that the actual number of protests due to the sublisting requirement and any associated increase in the awarded contract price is extremely small when compared to the total number and value of projects awarded and does not justify repeal of the subcontractors listing requirement. In fact, the data will also show that many times protests were warranted due to the listing of unlicensed contractors, uninsured contractors, etc. and served to protect the proper use of public funds.

We appreciate that this bill defines the terms bid shopping and bid peddling, especially since many major national construction industry organizations have unilaterally condemned bid shopping and bid peddling as unethical practices that results in lower competition, higher prices and substandard work.

This bill, however, fails in its attempt to prevent bid shopping and bid peddling by requiring the subcontractor to prove by a preponderance of evidence that the prime contractor engaged in such unethical practices. There is simply no way for a subcontractor to obtain such evidence because the subcontractor does not have access to the prime contractors bid numbers and correspondence with other subcontractors. Without this access, how does the aggrieved subcontractor prove that the prime contractor disclosed his or her bid number to other subcontractors?

In summary, the subcontractor listing requirement helps to promote fairness, ethical practices, and protects the responsible use of public funds, and our Association believes that the subcontractor listing requirement is the most effective and simplest method of preventing bid shopping and bid peddling after the award of a contract.

Therefore, we respectfully urge this committee to hold this bill.

Thank you very much for this opportunity to testify.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Gregg S. Serikaku".

Gregg S. Serikaku
Executive Director



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 10, 2015

To: House Committee on Consumer Protection & Commerce
The Honorable Representatives Angus McKelvey & Justin Woodson, Chairs

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

Subject: HB 550 Relating to Procurement

Notice of Hearing

Date: Wednesday, February 11, 2015
Time: 2:30 PM
Place: House Conference Room 325
State Capitol
415 South Beretania Street

Dear Chairs McKelvey, Woodson 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 550.

The intent and purpose of HB 550 to repeal the subcontractor listing requirement and prohibiting bid shopping and bid peddling is flawed and is not in the best interest of procuring agencies and for tax payers in general. This measure is bad legislation and will not prevent most bid protest as some of the proponents will argue. Although we agree that there are bid protests that may have delayed and increased project costs, to place the entire burden of these protests on subcontractor listings is simply not true as depicted in Section 1 of the bill. The prime contractor has the responsibility to perform its own due diligence in order to become a responsible and responsive bidder. Failure to list a subcontractor and misunderstanding the licensing requirements cannot be a legitimate reason to change the law but a failure of the prime contractor. The current practice of federal work not requiring the subcontractor listing has encouraged bid shopping and bid peddling. Many of our contractors hesitate to submit bids on federal jobs or to certain prime contractors as it has not been profitable or feasible working with prime contractors that practice bid shopping or subcontractors that bid peddle. NECA has been actively working with members of congress to once again reestablish the subcontractor listing for this very reason.

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 agency and the tax payers do not benefit from lower cost to the prime contractor as the savings are not passed on to the agency. Bid shopping and bid peddling are unethical business practices that threatens the integrity of the competitive bid system that works to ensure all customers and contractors receive accurate information and fair consideration. Simply eliminating the subcontractor listing and prohibiting the practice of bid shopping and bid peddling does not cure the problem of bid protests. Removing the requirement of the subcontractor listing removes the only defense against this unethical practice. Understand that there are occasions where many subcontractors become prime contractors because of the scope of the work to be performed who must comply with the requirements of submitting a bid including a list of their subcontractors.

In addition, SCR 92, SD2 (2013) established a task force to study the State's Procurement Code. The task force was made up of representatives of parties interested in and affected by its findings and recommendations to the State Legislature. The task force ultimately voted to overturn its initial decision and recommended by a vote of 6 to 5 to maintain the subcontractor listing. HB 550 would circumvent the work and recommendation of the task force.

Based on the above, ECAH **strongly opposes** the passage of HB 550 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



Island Construction & Demolition, LLC

Lic. # ABC-27321

P.O. Box 1857 Waianae, HI 96792 ♦ Office:(808)696-8070 ♦ Fax:(808)696-5330

February 10, 2015

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

SUBJECT: SUPPORT OF H.B. 550. RELATING TO PROCUREMENT. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Repeals the subcontractor-listing requirement for construction bids made under the competitive sealed bidding process.

HEARING

DATE: Wednesday, February 11, 2015
TIME: 2:30 p.m.
PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee,

Island Construction and Demolition LLC is a small family owned business, developed in 2005 by David E. Souza, David A. Souza and Carol J. Souza. All have been in the construction industry for over 20 years. The company has successfully operated in Honolulu, HI and outer islands for the past nine years working on both commercial and residential construction, demolition, and repair projects.

Island Construction and Demolition LLC is in support of H.B. 550, Relating to Procurement which proposes to eliminate the subcontractor listing requirement in public works procurement of construction, while also prohibiting bid shopping and bid peddling. The proposed changes are more consistent with the Model Procurement Code and federal construction contracts which do not promote nor require subcontractors to be listed at time of bid. In federal contracting, the absence of subcontractor listing provides an opportunity to further small business participation after a prime contractor has been awarded.

In public work contracts current law requires the bidding contractor to submit a list, at bid time, of 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 may require as little as one or two subcontractors, while other more complicated projects can easily require the use of over twenty five subcontractors depending on the scope of the project. While this may sound easy in concept, the listing requirement has created more opportunity for bid errors by the prime contractors especially with the over one hundred license classifications under the jurisdiction of our Contractors Licensing Board. Quite often, the subcontractor listing requirement has resulted in a non-low bidder alleging that the apparent low bidder failed to list a required sub specialty contractor or that the listed subcontractor did not possess the required license to perform the work.

While proponents of the subcontractor listing argue that the listing requirement deters bid shopping or bid peddling, it is important to recognize that this requirement is triggering bidders to use the listing as a tool to find flaws in submitted low bids, thereby causing an inefficient bidding system and increasing costs to the taxpayer. In an effort to address proponents concern this measure also prohibits bid shopping and bid peddling and provides a venue for the subcontractor to raise their concern outside of the procurement process. This way the procurement of public works does not need to be stalled due to a technical or inadvertent flaw.

For these reasons, Island Construction and Demolition LLC supports H.B. 550 and requests that this Committee pass this measure.

Sincerely,

David Souza
Island Construction & Demolition LLC.

February 10, 2015

Via Email: <http://www.capitol.hawaii.gov/submittestimony.asp>

To: COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Representative: Angus L. K. McKelvey, Chair

SUBJECT: OPPOSITION TO H.B. 550 RELATING TO PROCUREMENT

HEARING

DATE: FEBRUARY 11, 2015
TIME: 2:30 PM
PLACE: Conference Room 304

Chair McKelvey, and members of the Committee:

I am Fred Moore, President of HSI Mechanical, Inc. (a subcontractor), and a locally owned company with more than 53 employees serving the Hawaiian Islands since 1974. Thank you for the opportunity to submit testimony in Strong Opposition to H.B. 550.

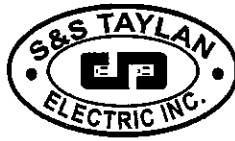
The only protection, on State / City & County projects, subcontractors have to insure that their quotations are respected and given unbiased consideration ("even playing field"), is through the current "listing law". Repealing this will open the door for "bid shopping" by prime contractors (i.e., sharing pricing from different subcontractors who have work very hard to develop their proposal).

We humbly request that this bill not be moved forward.

Please contact me at 808-478-8482 or at me email: fmoore@hsimechanical.com should you have any questions regarding this correspondence.



With Aloha, Fred Moore



S & S Taylan Electric, Inc.

ELECTRICAL CONTRACTOR, C13 (19633)
94-547 UKE'E ST. #304 WAIPAHU, HI 96797
(808) 676-8611 FAX (808) 676-7972

February 10, 2015

To: House Committee on Consumer Protection & Commerce
The Honorable Representatives Angus McKelvey & Justin Woodson, Chairs

From: Sosimo D. Taylan, President
S & S Taylan Electric Inc.

Subject: HB 550 Relating to Procurement

Notice of Hearing

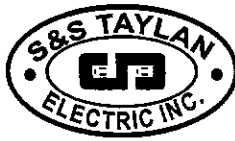
Date: Wednesday, February 11, 2015
Time: 2:30 PM
Place: House Conference Room 325
State Capitol
415 South Beretania Street

Dear Chairs McKelvey, Woodson and Committee members:

S & S Taylan Electric Inc., is a licensed electrical contractor doing business in the State of Hawaii. We **strongly oppose** the intent and purpose of HB 550.

The intent and purpose of HB 550 to repeal the subcontractor listing requirement and prohibiting bid shopping and bid peddling is flawed and is not in the best interest of procuring agencies and taxpayers in general. This measure will not prevent all bid protest as some of the proponents will argue. Although we agree that there are bid protests that have and can delay and increase project costs, to place the burden of these protests on the subcontractor listings is simply not true as depicted in Section 1 of the bill. The prime contractor has the responsibility to submit a proper bid that complies with all of the requirements including a subcontractor's bid list. The failure to do so is a failure to complete their due diligence. While bid deadlines are hectic, much of the problems describe in this bill can be resolved ahead of the deadlines just as any subcontractor submitting a bid must do.

The practice of bid shopping or bid peddling usually happens after the prime contractor has submitted their bid. When this happens, only the prime contractor benefits from the additional reduction in costs to the detriment of the subcontractor(s) who originally submitted their best low bid to properly perform the job. All further reductions in their bids are the cause for change orders or substandard work because of shortcuts or the use of substandard materials. We have experienced bid shopping in many of the private work we have contracted and in most cases only the prime contractor have enriched their coffers.



S & S Taylan Electric, Inc.

ELECTRICAL CONTRACTOR, C13 (19633)
94-547 UKE'E ST. #304 WAIPAHU, HI 96797
(808) 676-8611 FAX (808) 676-7972

In short, this bill prohibits the practice of bid shipping and bid peddling and at the same time eliminates the only defense against bid shopping/peddling by eliminating the subcontractor listing. This bill will be detrimental to best business practices and will cause the deterioration and demise of contractors that perform work as subcontractors legitimately. Understand that subcontractors themselves are affected by the subcontractor listing as they sometime perform work as a prime contractor.

Based on the above, S & S Taylan Electric Inc., **strongly opposes** the passage of HB 550 and urges this committee to stop this bill from moving forward.

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

Sincerely,

S & S Taylan Electric Inc.



February 10, 2015

To: House Committee on Consumer Protection & Commerce
The Honorable Representatives Angus McKelvey & Justin Woodson, Chairs

From: Dean Oshiro – President, Wayne Toyama – Vice President.

Subject: HB 550 Relating to Procurement

Notice of Hearing

Date: Wednesday, February 11, 2015
Time: 2:30 PM
Place: House Conference Room 325
State Capitol
415 South Beretania Street

Dear Chairs McKelvey, Woodson and Committee members:

DWE, Inc., is a licensed electrical contractor doing business in the State of Hawaii. We **strongly oppose** the intent and purpose of HB 550.

The intent and purpose of HB 550 to repeal the subcontractor listing requirement and prohibiting bid shopping and bid peddling is flawed and is not in the best interest of procuring agencies and taxpayers in general. This measure will not prevent all bid protest as some of the proponents will argue. Although we agree that there are bid protests that have and can delay and increase project costs, to place the burden of these protests on the subcontractor listings is simply not true as depicted in Section 1 of the bill. The prime contractor has the responsibility to submit a proper bid that complies with all of the requirements including a subcontractor's bid list. The failure to do so is a failure to complete their due diligence. While bid deadlines are hectic, much of the problems describe in this bill can be resolved ahead of the deadlines just as any subcontractor submitting a bid must do.

The practice of bid shopping or bid peddling usually happens after the prime contractor has submitted their bid. When this happens, only the prime contractor benefits from the additional reduction in costs to the detriment of the subcontractor(s) who originally submitted their best low bid to properly perform the job. All further reductions in their bids are the cause for change orders or substandard work because of shortcuts or the use of substandard materials. We have experienced bid shopping in some of the private and federal government work we have contracted and in most cases only the prime contractor have enriched their coffers. Two examples are KMR Military Base Improvements and US forestry Reserve new Facility. Both had some sort of Federal funding and did not require for subcontractors to be listed.



In short, this bill prohibits the practice of bid shopping and bid peddling and at the same time eliminates the only defense against bid shopping/peddling by eliminating the subcontractor listing. This bill will be detrimental to best business practices and will cause the deterioration and demise of contractors that perform work as subcontractors legitimately. Understand that subcontractors themselves are affected by the subcontractor listing as they sometime perform work as a prime contractor.

If a similar bill was introduced, stating that the customer did not need to post the winning prime contractor and that quotes were negotiable after bid opening we would not be having this discussion. There would be an outcry of opposition by the prime contractors, although it may save the government and ultimately the tax payer money.

Based on the above, DWE, Inc., **strongly opposes** the passage of HB 550 and urges this committee to stop this bill from moving forward.

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

Wayne Toyama – DWE, Inc.



general contractor license #ABC 21576

Sent Via E-Mail: CPCtestimony@capitol.hawaii.gov
Or via Fax at (808) 586-6161

INSERT DATE

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

SUBJECT: SUPPORT OF H.B. 550. RELATING TO PROCUREMENT. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Repeals the subcontractor listing requirement for construction bids made under the competitive sealed bidding process.

HEARING

DATE: Wednesday, February 11, 2015
TIME: 2:30 p.m.
PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee,

LYZ, Inc. is in support of H.B. 550, Relating to Procurement which proposes to eliminate the subcontractor listing requirement in public works procurement of construction, while also prohibiting bid shopping and bid peddling. The proposed changes are more consistent with the Model Procurement Code and federal construction contracts which do not promote nor require subcontractors to be listed at time of bid. In federal contracting, the absence of subcontractor listing provides an opportunity to further small business participation after a prime contractor has been awarded.

In public work contracts current law requires the bidding contractor to submit a list, at bid time, of 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 may require as little as one or two subcontractors, while other more complicated projects can easily require the use of over twenty five subcontractors depending on the scope of the project. While this may sound easy in concept, the listing requirement has created more opportunity for bid errors by the prime contractors especially with the over one hundred license classifications under the jurisdiction of our Contractors Licensing Board. Quite often, the subcontractor listing requirement has resulted in a non-low bidder alleging that the apparent low bidder failed to list a required sub specialty contractor or that the listed subcontractor did not possess the required license to perform the work.

While proponents of the subcontractor listing argue that the listing requirement deters bid shopping or bid peddling, it is important to recognize that this requirement is triggering bidders to use the listing as a tool to find flaws in submitted low bids, thereby causing an inefficient bidding system and increasing costs to the taxpayer. In an effort to address proponents concern this measure also prohibits bid shopping and bid peddling and provides a venue for the subcontractor to raise their concern outside of the procurement process. This way the procurement of public works does not need to be stalled due to a technical or inadvertent flaw.

For these reasons, **LYZ, Inc.** supports H.B. 550 and requests that this Committee pass this measure.

A handwritten signature in black ink, appearing to read 'James N. Kurita', is written over a large, light-colored circular scribble or stamp.

James N. Kurita
Vice President, Chief Operating Officer

SAH - Subcontractors Association of Hawaii

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

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

February 11, 2015

Testimony To: House Committee on Consumer Protection & Commerce
Representative Angus L.K. McKelvey, Chair

Presented By: Tim Lyons, President

Subject: H.B. 550 - RELATING TO PROCUREMENT

Chair McKelvey and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The SAH represents the following nine separate and distinct contracting associations who have combined their testimony in the interest of saving time and resources.

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 are opposed to this bill.

This bill is flawed. It makes a number of misstatements in what appears to be a type of purpose section. Additionally this legislature adopted and created a Procurement Task Force. That Procurement Task Force has voted against repeal of the Subcontractor Listing Clause and we are not sure why the legislature would want to constitute a task force if they didn't listen to it.

We want to be particularly clear that the Subcontractor Listing Clause benefits subcontractors who are in an economically disadvantaged position to general contractors. The repeal of the subcontractors listing requirement only benefits general contractors. It does not benefit the subcontractors and does not benefit the consumers or the taxpayers of this state since it is only the general contractor who would "pocket" any difference in the bid amounts. There would be no rendering of savings on the job.

Please note Hawaii is not the only state that requires this. California's law specifically says that "bid-shopping often results in poor quality of materials and workmanship to the detriment of the public".

Attached is our position paper on this subject which we hope you will consider as part of our testimony.

Thank you.

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-3304

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

REASONS FOR SUBCONTRACTOR LISTING

Section 103D-302 HRS Competitive Sealed Bidding. (a) and (b) reads as follows:

- a. Competitive sealed bidding does not include negotiations with bidders after the receipt and opening of bids.*
- b. If the invitation for bids is for construction, it shall specify that all bids shall include the name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the contract and the nature and scope of the work to be performed by each.*

This section requires that on public works contracts (state and county) when a prime contractor (general) bids a job they have to list all the subs that they propose to use and the nature and scope that each one of those subs is going to do. THIS IS GOOD PUBLIC POLICY.

Unlike private work and even commercial work when government uses 103D-302 Competitive Sealed Bidding you're going for the lowest bid. The agency looks for the lowest prime (general) contractor bid to do the project and each general contractor is looking at the lowest bid submitted by various subcontractors (painting, flooring, roofing, etc.). A general contractor feels compelled to use the lowest bid of subcontractors who have provided prices because if he does not, his competitor may very well use that price and then the other general contractor's total gross price may be lower as a result and he will get the job.

Subcontractor listing promotes certainty that allows the subcontractors to know that their price was used and that if that general contractor gets the job, they too will then get their job. The alternative is what we refer to as "bid chiseling or bid shopping" and in low bid situations this simply does not work well. All it does is provide an incentive to the subcontractor to cut corners, use inferior materials or provide inferior workmanship all based on a lower cost because they were pressured into agreeing to a price that is already lower than what they agreed would be their lowest price.

Subcontractor listing is good for government jobs as well because it ensures that the contractor and the subcontractor will provide their work based on the specifications of the job without a great deal more enforcement. Without subcontractor listing government monitoring agencies would need to increase their workforce and increase their jobsite monitoring activity to be sure that these corners were not cut.

Subcontractor listing protects the smaller subcontractors. There is typically one (1) general on the job and it there could be as many as nineteen (19) or twenty (20) subcontractors. The general contractor is just that, he is the general of the job or the boss of the job. Subcontractors have an inferior position both economically and legally on the job. Subcontractor listing prevents the general contractor from playing games with the price at the expense of the agency. Even where bid shopping does occur, the only one to have an advantage and to benefit economically is the general contractor. The contract has already been prepared for the general contractor at his bid price. If he shaves any money off subcontractor prices it will only go back into his pocket, not to the agency. The agency doesn't benefit, the taxpayer does not benefit; only the general contractor benefits.

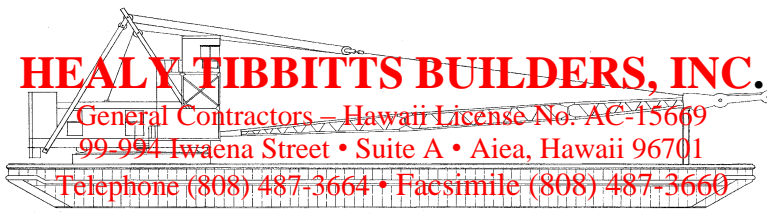
With price shopping and bid chiseling , there is an incentive to meet the price today but then try to get the price up later in terms of claims and filing for change orders. These can delay project completion and increase the cost of the project; again, to the detriment of the agency and the taxpayers.

The bottom line is that the bid amount of one competitor should not be divulged to another competitor before the award of the subcontract.

Subcontractor listing significantly reduces the practice of bid shopping and bid pedaling and it is GOOD PUBLIC POLICY.

BENEFITS OF SUBCONTRACTOR LISTING

- * Good public policy
- * Promotes certainty
- * Stems bid shopping and bid chiseling
- * Lessens governmental enforcement costs
- * Protects smaller subcontractors
- * Encourages subcontractors to bid public works
- * Lessens delays and cost increases



February 9, 2015

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

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

SUBJECT: SUPPORT OF H.B. 550. RELATING TO PROCUREMENT. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Repeals the subcontractor listing requirement for construction bids made under the competitive sealed bidding process.

HEARING

DATE: Wednesday, February 11, 2015

TIME: 2:30 p.m.

PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Woodson 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. In addition to being a general contractor, Healy Tibbitts also performs work as a subcontractor for foundation work.

Healy Tibbitts Builders, Inc. is **in support** of H.B. 550, Relating to Procurement which proposes to eliminate the subcontractor listing requirement in public works procurement of construction, while also prohibiting bid shopping and bid peddling. The proposed changes are more consistent with the Model Procurement Code and federal construction contracts which do not promote nor require subcontractors to be listed at time of bid. In federal contracting, the absence of subcontractor listing provides an opportunity to further small business participation after a prime contractor has been awarded.

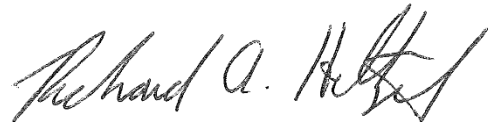
In public work contracts current law requires the bidding contractor to submit a list, at bid time, of all subcontractors to be employed on public works projects unless the prime contractor has the required specialty license and will do the work himself. Some projects may require as little as one or two subcontractors, while other more complicated projects can easily require the use of over twenty five subcontractors depending on the scope of the project. While this may sound easy in concept, the listing requirement has created more opportunity for bid errors by the prime contractors especially with the over one hundred license classifications under the jurisdiction of our Contractors Licensing Board. Quite often, the subcontractor listing requirement has resulted in a non-low bidder alleging that the apparent low bidder failed to list a required sub specialty contractor or that the listed subcontractor did not possess the required license to perform the work.

Healy Tibbitts Builders, Inc.

While proponents of the subcontractor listing argue that the listing requirement deters bid shopping or bid peddling, it is important to recognize that this requirement is triggering bidders to use the listing as a tool to find flaws in submitted low bids, thereby causing an inefficient bidding system and increasing costs to the taxpayer. In an effort to address proponents concern this measure also prohibits bid shopping and bid peddling and provides a venue for the subcontractor to raise their concern outside of the procurement process. This way the procurement of public works does not need to be stalled due to a technical or inadvertent flaw.

For these reasons, Healy Tibbitts Builders, Inc. supports H.B. 550 and requests that this Committee pass this measure.

Very truly yours,
Healy Tibbitts Builders, Inc.

A handwritten signature in black ink, appearing to read "Richard A. Heltzel". The signature is written in a cursive, flowing style.

Richard A. Heltzel
President



SHARING YOUR VISION. BUILDING SUCCESS.

Sent Via E-Mail: CPCTestimony@capitol.hawaii.gov
Or via Fax at (808) 586-6161

February 10, 2015

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

SUBJECT: SUPPORT OF H.B. 550. RELATING TO PROCUREMENT. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Repeals the subcontractor listing requirement for construction bids made under the competitive sealed bidding process.

HEARING

DATE: Wednesday, February 11, 2015
TIME: 2:30 p.m.
PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee,

Nordic PCL Construction, Inc. is **in support** of H.B. 550, Relating to Procurement which proposes to eliminate the subcontractor listing requirement in public works procurement of construction, while also prohibiting bid shopping and bid peddling. The proposed changes are more consistent with the Model Procurement Code and federal construction contracts which do not promote nor require subcontractors to be listed at time of bid. In federal contracting, the absence of subcontractor listing provides an opportunity to further small business participation after a prime contractor has been awarded.

In public work contracts current law requires the bidding contractor to submit a list, at bid time, of 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 may require as little as one or two subcontractors, while other more complicated projects can easily require the use of over twenty five subcontractors depending on the scope of the project. While this may sound easy in concept, the listing requirement has created more opportunity for bid errors by the prime contractors especially with the over one hundred license classifications under the jurisdiction of our Contractors Licensing Board. Quite often, the subcontractor listing requirement has resulted in a non-low bidder alleging that the apparent low bidder failed to list a required sub specialty contractor or that the listed subcontractor did not possess the required license to perform the work.

While proponents of the subcontractor listing argue that the listing requirement deters bid shopping or bid peddling, it is important to recognize that this requirement is triggering bidders to use the listing as a tool to find flaws in submitted low bids, thereby causing an inefficient bidding system and increasing costs to the taxpayer. In an effort to address proponents concern this measure also prohibits bid shopping and bid peddling and provides a venue for the subcontractor to raise their concern outside of the procurement process. This way the procurement of public works does not need to be stalled due to a technical or inadvertent flaw.

For these reasons, Nordic PCL Construction, Inc. supports H.B. 550 and requests that this Committee pass this measure.

Yours truly,

Glen Kaneshige
President

NORDIC PCL CONSTRUCTION, INC.

1099 Alakea Street, Suite 1560 Honolulu, HI 96813
Telephone: 808-541-9101 ♦ Fax: 808-541-9108 ♦ www.nordicpcl.com



February 10, 2015

To: House Committee on Consumer Protection & Commerce
The Honorable Representatives Angus McKelvey & Justin Woodson, Chairs

From: Bob Dewitz, Chairman

Subject: HB 550 Relating to Procurement

Notice of Hearing

Date: Wednesday, February 11, 2015
Time: 2:30 PM
Place: House Conference Room 325
State Capitol
415 South Beretania Street

Dear Chairs McKelvey, Woodson and Committee members:

American Electric Co. is a licensed electrical contractor doing business in the State of Hawaii since 1947. American is committed to ethical business practices in general and ethical bidding practices in particular. We **strongly oppose** the intent and purpose of HB 550 as it will not serve to promote good ethics in the industry.

The intent and purpose of HB 550 to repeal the subcontractor listing requirement and prohibiting bid shopping and bid peddling is flawed and is not in the best interest of procuring agencies and taxpayers in general. This measure will not prevent all bid protest as some of the proponents will argue. Although we agree that there are bid protests that have and can delay and increase project costs, to place the burden of these protests on the subcontractor listings is simply not true as depicted in Section 1 of the bill. Many bid protests have to do with licensing and other issues not related to the subcontractor listing, so this is something of a red herring.

The practice of bid shopping or bid peddling happens after the prime contractor has submitted their bid. When this happens, only the prime contractor benefits from the additional reduction in costs to the detriment of the subcontractor(s) who originally submitted their best low bid to properly perform the job. In short, this bill prohibits the practice of bid shipping and bid peddling and at the same time eliminates the only defense against bid shopping/peddling by eliminating the subcontractor listing. This bill will be detrimental to ethical business practices and will cause significant financial hardship to the subcontractors – and their employees – who operate legitimately.

Based on the above, American Electric **strongly opposes** the passage of HB 550 and urges this committee to stop this bill from moving forward.

Very Sincerely,

Chairman



S & M SAKAMOTO, INC.

GENERAL CONTRACTORS

Sent Via E-Mail: CPCtestimony@capitol.hawaii.gov
Or via Fax at (808) 586-6161

February 10, 2015

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON, VICE
CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER
PROTECTION AND COMMERCE

SUBJECT: SUPPORT OF H.B. 550. RELATING TO PROCUREMENT. Prohibits bid shopping and
bid peddling for the competitive sealed bidding process. Repeals the subcontractor listing
requirement for construction bids made under the competitive sealed bidding process.

HEARING

DATE: Wednesday, February 11, 2015

TIME: 2:30 p.m.

PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee,

S & M Sakamoto, Inc. is **in support** of H.B. 550, Relating to Procurement which proposes to eliminate the subcontractor listing requirement in public works procurement of construction, while also prohibiting bid shopping and bid peddling. The proposed changes are more consistent with the Model Procurement Code and federal construction contracts which do not promote nor require subcontractors to be listed at time of bid. In federal contracting, the absence of subcontractor listing provides an opportunity to further small business participation after a prime contractor has been awarded.

In public work contracts current law requires the bidding contractor to submit a list, at bid time, of 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 may require as little as one or two subcontractors, while other more complicated projects can easily require the use of over twenty five subcontractors depending on the scope of the project. While this may sound easy in concept, the listing requirement has created more opportunity for bid errors by the prime contractors especially with the over one hundred license classifications under the jurisdiction of our Contractors Licensing Board. Quite often, the subcontractor listing requirement has resulted in a non-low bidder alleging that the apparent low bidder failed to list a required sub specialty contractor or that the listed subcontractor did not possess the required license to perform the work.

While proponents of the subcontractor listing argue that the listing requirement deters bid shopping or bid peddling, it is important to recognize that this requirement is triggering bidders to use the listing as a tool to find flaws in submitted low bids, thereby causing an inefficient bidding system and increasing costs to the taxpayer. In an effort to address proponents concern this measure also prohibits bid shopping and bid peddling and provides a venue for the subcontractor to raise their concern outside of the procurement process. This way the procurement of public works does not need to be stalled due to a technical or inadvertent flaw.

For these reasons, **S & M Sakamoto, Inc.** supports H.B. 550 and requests that this Committee pass this measure.

Very truly yours,
S & M Sakamoto, Inc.

Gerard Sakamoto
President



HAWAII
94-155 Leo'ole Street, Suite 302
Waipahu, HI 96797
Ph: (808) 677-5180
Fx: (808) 677-5190
rward@psiac.com

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

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

SUBJECT: SUPPORT OF H.B. 550. RELATING TO PROCUREMENT. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Repeals the subcontractor listing requirement for construction bids made under the competitive sealed bidding process.

HEARING

DATE: Wednesday, February 11, 2015
TIME: 2:30 p.m.
PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee,

Performance Systems, Inc. is a Native Hawaiian Owned General Contractor serving the Hawaiian Islands and the mainland. We primarily focus on Federal, municipal, and industrial construction. As such, we have bid, and been awarded work for the Board of Water Supply on Oahu, and the County of Hawaii. As our work is primarily low-bid public contracts, the naming law has proven to be a burden on bid day. I have been witness to the difficulty of trying to fill out the complicated bid forms in Hawaii. On bid day, our focus is to provide the taxpayers the best price for a project. This is often overshadowed by filling in the naming forms, and checking the licensing web site for each subcontractor, ensuring that their license is current. In addition to this requirement, it is often necessary to write the sub-contractor's legal business name exactly as it appears on the website, or face a protest and the bid not being awarded.

Performance Systems, Inc. is **in support** of H.B. 550, Relating to Procurement which proposes to eliminate the subcontractor listing requirement in public works procurement of construction, while also prohibiting bid shopping and bid peddling. The proposed changes are more consistent with the Model Procurement Code and federal construction contracts which do not promote nor require subcontractors to be listed at time of bid. In federal contracting, the absence of subcontractor listing provides an opportunity to further small business participation after a prime contractor has been awarded.

As I have bid public projects in Idaho for many years, I can honestly say that the naming procedure does not benefit the taxpayer in any way. I did not believe it when my peers in the industry told me that the second and third bidder has as good a shot at being awarded a contract as the low bidder. I was shocked to see that this was fact.

The Okada Trucking decision appears to have been taken out of context by the public agencies. From my understanding, the dispute was more about a General Contractor self-performing work that they did not carry a license to perform. As such, this has somehow turned into a way to try to cut back on bid-shopping. While I do not participate in bid shopping as a general moral duty to this industry, I am also not naïve enough to think that my little part is going to change anything about this industry. No amount of naming laws have an effect on this practice. The bid shoppers will always know which subs to name regardless of the bids received on bid day, and will continue to name them even if they don't submit a bid. After the contract is awarded, the negotiations will begin. In the event that they do name the low bidder, they will be forced to negotiate with them, and try to get them to accept a lower award amount for the sub-contract. Either way, the sub-contractors will always know which General Contractors are

participating in this practice, and will most likely give them higher pricing than the GC's that do not participate.

There are a couple of ways that the naming law can be damaging to the taxpayer.

The first is in the case where a sub-contractor purposely submits bids that are lower than the fair price for the scope of work, and gets locked into a sub-contract due to the naming law. In this case, they may easily be able to claim they did not have all of the scope covered in the fine print on the bid. It is the GC's responsibility to verify the scope at bid time, but when the GC is spending all of their time verifying licenses and the spelling of the business names, it can be difficult to catch all of these issues, especially if they bid comes in close to bid time. This practice is just as damaging to public low-bid contracting as is bid shopping. The naming law does not protect the GC from this practice.

The second case is occurs when the GC makes a mistake on a bid form, or in their estimate, and inadvertently leaves money out of the bid. In most states, the public entity does not really care if a mistake is made, and they will issue the Contract. In Hawaii, it seems to be very easy to pull a bid, and not forfeit the bid bond if a mistake can be shown to have been made. While pulling a bid with an obvious mistake is not necessarily bad for the public entity, the naming law does not allow the bidder to recover from a mistake, and may force them to pull the bid as no other option for making up the budget shortfall. In this case, the public entity will be forced to take a higher bid, or endure the cost of re-bidding the project.

While the naming law has been marketed as "fair practice" for subcontractors, and giving them protection from bid shopping, it also has shortfalls in these protections. The general contractor is given the opportunity to change their bid up until the exact time and date of the bid opening. The sub-contractor is not afforded this opportunity. In the past, I have given my subs this same opportunity in that they can offer a cut to their price right up to the bid date and time. I may not always have gotten the cut if it was at the wire, but if their cut put them as the low bidder, then they were awarded the contract. With the naming law, the forms have to be filled out in time to submit, leaving little time for last minute cuts. This could unfairly exclude a legitimate low sub-bid that was received prior to the bid date and time.

Another major problem with the naming law is that all scopes of work are not always covered prior to bid time. It is possible that a general contractor does not receive a quote. In this case, with the current law, the GC still has to name a sub. Once the sub is named, the GC is forced to negotiate a price with that sub, and does not have the option to solicit multiple bids to meet their budget.

In summary, any public agency soliciting a low bid contract is only entering into a contract with one other entity, the general contractor. As such, the public entity is asking the general contractor to take on the risk of successfully completing the project. In a low bid system, the process is fair and the public is assured of getting the best price on a project. From this point on, it is the responsibility of the general contractor to determine the appropriate materials, sub-contractors, and systems for completing the project. The bid process sometimes only lasts a couple of weeks. After careful post bid review, the low sub-bid or material quote on bid day is not always the best value for the general contractor. While I am not a proponent of bid shopping, it is a fact that subs make mistakes on bids, and subs are not held to the same standards as a general contractor is to honor their quote. They do not put up a bid bond, and the only avenue a GC has to enforce their quote is via civil courts. The general contractor should have the right to review all sub-quotes after the bid is submitted, and determine the subcontractor's scope of work is adequate. The GC should also be able to determine if the subcontractor is qualified to perform the work before entering into a contract with them. The naming law does not support this.

In public work contracts current law requires the bidding contractor to submit a list, at bid time, of 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 may require as little as one or two subcontractors, while other more complicated projects can easily require the use of over twenty five subcontractors depending on the scope of the project. While this may sound easy in concept, the listing requirement has created more opportunity for bid errors by the prime contractors especially with the over one hundred license classifications under the jurisdiction of our Contractors Licensing Board. Quite often, the subcontractor listing requirement has resulted in a non-low bidder alleging that the apparent low bidder failed to list a required sub specialty contractor or that the listed subcontractor did not possess the required license to perform the work.

While proponents of the subcontractor listing argue that the listing requirement deters bid shopping or bid peddling, it is important to recognize that this requirement is triggering bidders to use the listing as a tool to find flaws in submitted low bids, thereby causing an inefficient bidding system and increasing costs to the taxpayer. In an effort to address proponents concern this measure also prohibits bid shopping and bid peddling and provides a venue for the subcontractor to raise their concern outside of the procurement process. This way the procurement of public works does not need to be stalled due to a technical or inadvertent flaw.

For these reasons, Performance Systems, Inc. supports H.B. 550 and requests that this Committee pass this measure.

Sincerely,

Ryan Ward, P.E.
Division Manager, Performance Systems, Inc.

Abbey Carpet of Maui
25 S. Kahului Beach Road
Kahului, Hawaii 96732

February 10, 2015

House Committee on Consumer Protection & Commerce
Legislature, State of Hawaii
Honolulu, Hawaii

Re: HB No. 550

Chairman Angus L.K. McKelvey and Members of the Committee:

While the overall intent of this bill is understandable, the justifications are without merit.

By design, opportunities to question bids are allowed to provide accountability and maintain propriety. If there are delays that are caused because of an inquiry, it must be because there was veracity in the question. If the question is not well founded, there would be no delay. This process is proper to protect the best interest of the public.

Being a General Contractor automatically means that you have certain obligations and responsibilities to ensure the professional execution of any project. This would include verification of sub's licenses, compliance with the law and proficiency and competence when offering a bid for any project. To have shortcomings because of certain difficulties, as espoused in the bill, would be tantamount to not being qualified to operate as a general contractor. Not listing a sub contractor would not release the General Contractor from any regulations or requirements presently in place.

Your favorable consideration to kill this bill is requested.

Respectfully,



Warren Orikasa
President
Abbey Carpet of Maui
25 S. Kahului Beach Road
Kahului, Hawaii 96732

Electricians, Inc.

2688 Waiwai Loop - Honolulu, HI 96819
Telephone (808) 839-2242 - Fax (808) 839-1344

2/10/2015

To: House Committee on Consumer Protection & Commerce
The Honorable Representatives Angus McKelvey & Justin Woodson, Chairs

From: Lance Yamamura
Electricians, Inc.

Subject: HB 550 Relating to Procurement

Notice of Hearing

Date: Wednesday, February 11, 2015
Time: 2:30 PM
Place: House Conference Room 325
State Capitol
415 South Beretania Street

Dear Chairs McKelvey, Woodson and Committee members:

Electricians, Inc. is a licensed electrical contractor doing business in the State of Hawaii. We strongly oppose the intent and purpose of HB 550.

The intent and purpose of HB 550 to repeal the subcontractor listing requirement and prohibiting bid shopping and bid peddling is flawed and is not in the best interest of procuring agencies and taxpayers in general. This measure will not prevent all bid protest as some of the proponents will argue. Although we agree that there are bid protests that have and can delay and increase project costs, to place the burden of these protests on the subcontractor listings is simply not true as depicted in Section 1 of the bill. The prime contractor has the responsibility to submit a proper bid that complies with all of the requirements including a subcontractor's bid list. The failure to do so is a failure to complete their due diligence. While bid deadlines are hectic, much of the problems describe in this bill can be resolved ahead of the deadlines just as any subcontractor submitting a bid must do.

The practice of bid shopping or bid peddling usually happens after the prime contractor has submitted their bid. When this happens, only the prime contractor benefits from the additional

Electricians, Inc.

2688 Waiwai Loop - Honolulu, HI 96819
Telephone (808) 839-2242 - Fax (808) 839-1344

reduction in costs to the detriment of the subcontractor(s) who originally submitted their best low bid to properly perform the job. All further reductions in their bids are the cause for change orders or substandard work because of shortcuts or the use of substandard materials.

In short, this bill prohibits the practice of bid shipping and bid peddling and at the same time eliminates the only defense against bid shopping/peddling by eliminating the subcontractor listing. This bill will be detrimental to best business practices and will cause the deterioration and demise of contractors that perform work as subcontractors legitimately. Understand that subcontractors themselves are affected by the subcontractor listing as they sometime perform work as a prime contractor.

Based on the above, Electricians, Inc. strongly opposes the passage of HB 550 and urges this committee to stop this bill from moving forward.

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



Lance Yamamura
Treasurer for Electricians, Inc.

TO: Members of the Committee on Consumer Protection & Commerce

FROM: Natalie Iwasa
Honolulu, HI 96825
808-395-3233

HEARING: 2:30 p.m. Wednesday, February 11, 2015

SUBJECT: HB 550 Relating to Procurement - **OPPOSED to removal of Subcontractor list**

Aloha Chair and Committee Members,

Thank you for allowing me the opportunity to provide testimony on HB 550, which would remove the requirement to list subcontractors from construction bids made under competitive bids as well as prohibit bid shopping and bid peddling.

I oppose the repeal of the requirement to list subcontractors in the bid, especially on public projects. This is one way to reduce the amount of bid shopping. In fact, this bill is taking us backwards.

Please also note that **the American Subcontractors Association (ASA) supports bid listing**. The following is from a letter the ASA sent to the General Services Administration regarding federal contracts, but it applies to state and county contracts as well:

To make this interim rule more effective, ASA believes that prime contractors should be required to list first tier subcontract information with their bids, rather than after the prime contractor is awarded the contract. This practice, known as bid listing, gives contracting officers the information they need to effectively oversee projects and be good stewards of taxpayer dollars from day one. With bid listing, agencies will be able to demand greater accountability before the contract is signed. Further, taxpayers will have access to more information that will allow them to demand greater fiscal discipline.

Please do not repeal the bid listing requirement.

woodson2-Rachel

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 10, 2015 10:59 AM
To: CPCtestimony
Cc: gtango2000@yahoo.com
Subject: *Submitted testimony for HB550 on Feb 11, 2015 14:30PM*

HB550

Submitted on: 2/10/2015

Testimony for CPC on Feb 11, 2015 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Glenn Tango	Individual	Oppose	No

Comments:

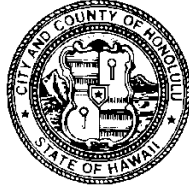
Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

LATE

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. KUOKAWA
DEPUTY DIRECTOR

TESTIMONY OF NELSON H. KOYANAGI, JR.
DIRECTOR OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
BEFORE THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
FEBRUARY 11, 2015, 2:30 PM, Conference Room 325

HOUSE BILL 550, "RELATING TO PROCUREMENT"

Position: In Support

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

The Department of Budget and Fiscal Services, City and County of Honolulu,
supports House Bill No. 550, 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.

LATE

HEARING BEFORE THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

House Bill 550
Relating To Procurement

Wednesday, February 10, 2015
2:30 p.m.
Conference Room 325

Chair McKelvey, Vice-Chair Woodson, and members of the committee, thank you for this opportunity to submit testimony on behalf of the Carpet, Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund (the "Fund") in **strong opposition** to HB550.

HB550 repeals the subcontractor listing requirement for public construction projects set forth in Hawaii Revised Statutes ("HRS") §103D-302(g) and prohibits the practice of bid shopping or bid peddling (collectively "bid shopping"), making the practices punishable in money damages. The burden of proving bid shopping by a preponderance of the evidence is placed on "the subcontractor" alleging bid shopping.

The Fund does not support HB550 because it removes subcontractor listing, the only viable way to prevent bid shopping, and replaces it with a legal cause of action containing a standard of proof that will be very difficult to meet. In place of heading off bid shopping before it can take place as HRS §103D-302(g) does, HB550 will make the lengthy, drawn out civil litigation process the only way to address allegations of bid shopping. This would only encourage, not discourage, the practice of bid shopping. Finally, the language of HB550 also appears to afford a remedy only to subcontractors and not to general contractors who bid on the public project.

In response to Senate Concurrent Resolution 92, S.D.2 (2013), the Comptroller's Office created a Task Force to study the cost impacts of the procurement process on public construction projects relative to economy, efficiency, effectiveness, and impartiality. The Task Force studied bid protests related to subcontractor listing and found that the increase in the amount of bid protests was small and the increase in construction costs was statistically insignificant. The Task Force rejected calls for the repeal or amendment of HRS §103D(g), voting 6-5 among the voting members, to recommend keeping the statute as is.

For the foregoing reasons, the Fund respectfully requests that HB550 be held in committee. Again, thank you for the opportunity to testify on this measure.

LATE

HEARING BEFORE THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

House Bill 550
Relating To Procurement

Wednesday, February 10, 2015
2:30 p.m.
Conference Room 325

Chair McKelvey, Vice-Chair Woodson, and members of the committee, thank you for this opportunity to submit testimony on behalf of the Hawaii Glaziers, Architectural Metal Glassworkers Local Union 1889 AFL-CIO Stabilization Trust Fund (the "Fund") in **strong opposition** to HB550.

HB550 repeals the subcontractor listing requirement for public construction projects set forth in Hawaii Revised Statutes ("HRS") §103D-302(g) and prohibits the practice of bid shopping or bid peddling (collectively "bid shopping"), making the practices punishable in money damages. The burden of proving bid shopping by a preponderance of the evidence is placed on "the subcontractor" alleging bid shopping.

The Fund does not support HB550 because it removes subcontractor listing, the only viable way to prevent bid shopping, and replaces it with a legal cause of action containing a standard of proof that will be very difficult to meet. In place of heading off bid shopping before it can take place as HRS §103D-302(g) does, HB550 will make the lengthy, drawn out civil litigation process the only way to address allegations of bid shopping. This would only encourage, not discourage, the practice of bid shopping. Finally, the language of HB550 also appears to afford a remedy only to subcontractors and not to general contractors who bid on the public project.

In response to Senate Concurrent Resolution 92, S.D.2 (2013), the Comptroller's Office created a Task Force to study the cost impacts of the procurement process on public construction projects relative to economy, efficiency, effectiveness, and impartiality. The Task Force studied bid protests related to subcontractor listing and found that the increase in the amount of bid protests was small and the increase in construction costs was statistically insignificant. The Task Force rejected calls for the repeal or amendment of HRS §103D(g), voting 6-5 among the voting members, to recommend keeping the statute as is.

For the foregoing reasons, the Fund respectfully requests that HB550 be held in committee. Again, thank you for the opportunity to testify on this measure.



LATE

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

HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

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

KIKA G. BUKOSKI
Executive Director

February 11, 2015

EXECUTIVE BOARD

REGINALD CASTANARES
President
Plumbers & Fitters Local 675

DAMIEN T.K. KIM
Vice President
International Brotherhood of
Electrical Workers Local 1186

MARC YAMANE
Secretary Treasurer
Elevator Constructors Local 126

RYDEN VALMOJA
Sergeant At Arms
District Council 50
Painters & Allied Trades Local 1791
Carpet, Linoleum, & Soft Tile
Local 1926
Drywall, Tapers & Finishers
Local 1944
Glaziers, Architectural Metal &
Glassworkers Local 1889

DOUGLAS FULP
Trustee
International Assoc. of Heat & Frost
Insulators & Allied Workers Local 132

JOSEPH O'DONNELL
Trustee
Iron Workers
Local 625

GARY AYCOCK
Boilermakers, Ironship Builders
Local 627

PETER IRIARTE
Operative Masons & Plasterers
Local 630

RONAN KOZUMA
Hawaii Teamsters & Allied
Workers Local 996

VAUGHN CHONG
Roofers, Waterproofers & Allied
Workers United Union of Roofer
Local 221

Honorable Representative Angus McKelvey, Chair
Honorable Representative Justin Woodson, Vice Chair
Members of the Committee on Consumer Protection & Commerce
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: **IN OPPOSITION** TO HB550 RELATING TO PROCUREMENT
Hearing: Wednesday, February 11, 2015, 2:30 p.m. Conference Room 325

Honorable Chair, Vice Chair and Committee Members;

The Hawaii Building & Construction Trades Council, AFL-CIO (HBCTC) is a chartered member of the Building and Construction Trades Department, AFL-CIO which was first organized in 1908 and is 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 being to provide employment opportunities and living wages for many of Hawaii's working men and women in the construction industry.

The Council respectfully OPPOSES HB550, which proposes to prohibit bid shopping and bid peddling for the competitive sealed bidding process and repeals the subcontractor listing requirement for construction bids made under the competitive sealed bidding process.

The competitive sealed bid process assures that funds expended on public works projects are done in a fair, equitable and objective manner. Bids are awarded to the lowest responsive and "RESPONSIBLE" bidder and protects public health and safety.

Although the ABA Model Procurement Code may not *specifically* cite subcontractor listing in its model policy, it does however cite "**Standards of Responsibility**" to include but not be limited to, whether a prospective contractor has the..."personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements".

The ABA Model Code goes on to cite that the ability to meet such "**Standards of Responsibility**" may be demonstrated by submitting upon request, a) evidence that such contractor possesses such necessary items; b) acceptable plans to subcontract for such necessary items; or c) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

Additionally, the ABA Model Code states that, "before awarding a contract, the Procurement Officer *'must'* be satisfied that the prospective contractor is responsible."

In addition to preventing what is commonly known as bid shopping or bid peddling, subcontractor listing requirements provide a process by which Procurement Officers can determine such "**Standards of Responsibility**" as noted above and cited in the ABA Model Procurement Code.

Interesting to note, aside from subcontractor listing, Hawaii's Procurement Codes do not include other policies also found in the ABA Model Procurement Code.

For example, Hawaii has recently adopted legislation contrary to the ABA Model Procurement Code which cites the '**Competitive Sealed Bidding Process' (IFB)** as its primary method of procurement unless the Chief Procuring Officer or designee... "determines in writing, pursuant to regulations, that the use of competitive sealed bidding is either not practicable or not advantageous to the State."

Protests that are filed and attributed to subcontractor listing often uncover other evidence of a prospective contractors "*NON-RESPONSIBILITY*" such as unlicensed, unqualified, and/or uninsured contractors or subcontractors.

Contrary to proponents claim, subcontractor listing is occasionally used on federal procurement and has been regularly discussed on a national level through legislation introduced in Congress (Quality Assurance Act) as recent as 2013.

Subcontractor listing was a topic of discussion in the recently formed State Procurement Code Task Force and it was the recommendation of the Task Force to leave the subcontractor listing requirement "AS IS" with NO CHANGE and NO REPEAL. Those voting to keep subcontractor listing "AS IS" included the Department of Accounting and General Services (Comptroller), the State Procurement Office, the Department of Transportation, the Board of Water Supply, the Subcontractors Association of Hawaii and the HBCTC.

HBCTC understands and supports efforts to streamline the procurement process, but not at the expense of effective, impartial, fair, open and transparent policies such as subcontractor listing. The process is working as it was intended. Of the various states that have adopted the ABA Model Procurement Code, 78% have some form of subcontractor listing requirement and at least one requires contracting directly with the subcontractor.

Please do not confuse the Okada Trucking Decision with subcontractor listing. Contrary to what some proponents of HB550 might attempt to convey, the Okada Trucking Decision is a contractor licensing issue (HRS 444). 'Subcontractor listing' is simply a requirement of the competitive sealed bid process and a method of determining a prospective contractor's non-responsiveness and/or non-responsibility in response to an Invitation To Bid (IFB) (HRS 103D-302).

Lastly, language in HB550 proposing to prohibit bid shopping and bid peddling is unenforceable and places an unrealistic burden of proof upon the victims of such unscrupulous and unethical practices.

We respectfully request that you HOLD HB550 in Committee. Mahalo.

House of Representatives
The Twenty-Eight Legislature
Committee on Consumer Protection and Commerce
February 11, 2015, 2:30 p.m.
Room 325

LATE

Statement of the Hawaii Regional Council of Carpenters on H.B. 550,
Prohibiting Bid Shopping and Bid Peddling

The Hawaii Regional Council of Carpenters supports the passage of H.B. 550 as a sound approach to focusing on an identified problem in the bidding system for public works.

The Bill provides for a direct approach to practices of bid shopping and bid peddling, which undermine the integrity of the bid system, rather than requiring the listing of all subcontractors for a construction project by prime contractors at the time of bid, and justifying it as an indirect deterrent.

Public works construction has been delayed most often when a mistake is made in listing subcontractors, and a competing contractor protests on that technical basis. Bid shopping is not the basis for the protest, nor is the possibility of it having occurred prior to bid submittal brought to the surface. The public benefit, and putting people to work, is delayed.

This may be part of the reason there is no such subcontractor listing requirement for Federal public works. Should further work on the system to prohibit bid shopping and/or peddling have merit, passage of the bill will allow that to occur.

LATE

HEARING BEFORE THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

House Bill 550
Relating To Procurement

Wednesday, February 10, 2015
2:30 p.m.
Conference Room 325

Chair McKelvey, Vice-Chair Woodson, and members of the committee, thank you for this opportunity to submit testimony on behalf of the Painting Industry of Hawaii Labor Management Cooperation Trust Fund (the "Fund") in **strong opposition** to HB550.

HB550 repeals the subcontractor listing requirement for public construction projects set forth in Hawaii Revised Statutes ("HRS") §103D-302(g) and prohibits the practice of bid shopping or bid peddling (collectively "bid shopping"), making the practices punishable in money damages. The burden of proving bid shopping by a preponderance of the evidence is placed on "the subcontractor" alleging bid shopping.

The Fund does not support HB550 because it removes subcontractor listing, the only viable way to prevent bid shopping, and replaces it with a legal cause of action containing a standard of proof that will be very difficult to meet. In place of heading off bid shopping before it can take place as HRS §103D-302(g) does, HB550 will make the lengthy, drawn out civil litigation process the only way to address allegations of bid shopping. This would only encourage, not discourage, the practice of bid shopping. Finally, the language of HB550 also appears to afford a remedy only to subcontractors and not to general contractors who bid on the public project.

In response to Senate Concurrent Resolution 92, S.D.2 (2013), the Comptroller's Office created a Task Force to study the cost impacts of the procurement process on public construction projects relative to economy, efficiency, effectiveness, and impartiality. The Task Force studied bid protests related to subcontractor listing and found that the increase in the amount of bid protests was small and the increase in construction costs was statistically insignificant. The Task Force rejected calls for the repeal or amendment of HRS §103D(g), voting 6-5 among the voting members, to recommend keeping the statute as is.

For the foregoing reasons, the Fund respectfully requests that HB550 be held in committee. Again, thank you for the opportunity to testify on this measure.

SMCA *Sheet Metal Contractors Association*

2850 Pa'a Street, Suite 207, Honolulu, HI 96819-4431, Ph (808) 845-9393, Fax (808) 845-9395 email: neal@smcahi.com

NEAL K. ARITA
Executive Director

LATE

TESTIMONY TO THE HOUSE OF REPRESENTATIVES

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Representative Angus L.K. McKelvey, Chair

Hearing Date: Wednesday February 11, 2015
2:30 pm

Re: H.B. 550 Relating to Procurement

Dear Chair McKelvey and members of the Committee:

I am Neal Arita, Executive Director of the Sheet Metal Contractors Association, representing various Sheet Metal Contractors in the State of Hawaii.

We do not support this bill.

We believe that the current Subcontractor Listing laws have been beneficial to the Procurement process, with exception to those who do not follow the procurement laws and rules.

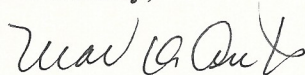
The description of HB550 paints a picture of a failed procurement process; on the contrary, the current process – although imperfect – has adequately provided a fair and level “bidding” field. Bidders who do not properly fulfill the requirements of the existing Procurement Laws create problems.

Changing the process by repealing the Subcontractor listing is a big mistake which would allow for:

- Opportunities for unscrupulous bidders to evade a fair and level playing field when bidding
- More bid protests
- Lowering the standard required for the bid process

Thank you for considering this testimony as we do not support this HB 550.

Sincerely,



Neal K. Arita

Executive Director, SMCA

LATE

HEARING BEFORE THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

House Bill 550
Relating To Procurement

Wednesday, February 10, 2015
2:30 p.m.
Conference Room 325

Chair McKelvey, Vice-Chair Woodson, and members of the committee, thank you for this opportunity to submit testimony on behalf of the Hawaii Tapers Market Recovery Trust Fund (the "Fund") in **strong opposition** to HB550.

HB550 repeals the subcontractor listing requirement for public construction projects set forth in Hawaii Revised Statutes ("HRS") §103D-302(g) and prohibits the practice of bid shopping or bid peddling (collectively "bid shopping"), making the practices punishable in money damages. The burden of proving bid shopping by a preponderance of the evidence is placed on "the subcontractor" alleging bid shopping.

The Fund does not support HB550 because it removes subcontractor listing, the only viable way to prevent bid shopping, and replaces it with a legal cause of action containing a standard of proof that will be very difficult to meet. In place of heading off bid shopping before it can take place as HRS §103D-302(g) does, HB550 will make the lengthy, drawn out civil litigation process the only way to address allegations of bid shopping. This would only encourage, not discourage, the practice of bid shopping. Finally, the language of HB550 also appears to afford a remedy only to subcontractors and not to general contractors who bid on the public project.

In response to Senate Concurrent Resolution 92, S.D.2 (2013), the Comptroller's Office created a Task Force to study the cost impacts of the procurement process on public construction projects relative to economy, efficiency, effectiveness, and impartiality. The Task Force studied bid protests related to subcontractor listing and found that the increase in the amount of bid protests was small and the increase in construction costs was statistically insignificant. The Task Force rejected calls for the repeal or amendment of HRS §103D(g), voting 6-5 among the voting members, to recommend keeping the statute as is.

For the foregoing reasons, the Fund respectfully requests that HB550 be held in committee. Again, thank you for the opportunity to testify on this measure.



LATE

February 10, 2015

Via Email

Representative Angus L.K. McKelvey, Chair
Committee on Consumer Protection and Commerce
House of Representatives
The Twenty-Eighth Legislature, Regular Session of 2015
State Capitol
Honolulu, HI 96813

Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

SUBJECT: H.B. 550 Relating to Procurement

My name is Jackson Cheng, General Manager of Alaka'i Mechanical Corporation and I **strongly oppose** HB 550 which is slated to be heard on February 11 at 2:30 PM.

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. 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.

We have in the past bid many federal and private jobs where sub-listing is not required and have experienced the detrimental effects "bid shopping": After a general contractor was awarded the job, they gave the job to someone else citing that the other sub was "just under" our price. We have confirmed on various occasions from other general contractors who bid the job, that among the subs that submitted a price for our scope of work, we were the lowest bidder.

Bid shopping ultimately reduces competition by discouraging the number of subcontractors who are willing to submit a competitive bid.

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. In fact, the sub-listing 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. And no matter what language is used to say that bid shopping is not legal and should not be done, the only true safeguard against it is to list the subs.

Alaka'i Mechanical is one of the largest mechanical sub-contractors in the State and we respectfully urge the committee to hold this bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jackson Cheng', with a long horizontal flourish extending to the right.

Jackson Cheng
General Manager, Direct Sales and Service

**Construction Development, Inc.***serving the Pacific since 1978*

Via Email

February 10, 2015

LATE

Representative Angus L.K. McKelvey, Chair
Committee on Consumer Protection and Commerce
House of Representatives
The Twenty-Eighth Legislature, Regular Session of 2015
State Capitol
Honolulu, HI 96813

Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

SUBJECT: H.B. 550 Relating to Procurement

My name is Stephen Leis, Secretary / Treasurer of Construction Development, Inc. and I **strongly oppose** HB 550.

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. 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.

Bid shopping ultimately reduces competition by discouraging the number of subcontractors who are willing to submit a competitive bid.

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. 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,


Stephen Leis



LATE

February 10, 2015

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

SUBJECT: SUPPORT OF H.B. 550. RELATING TO PROCUREMENT. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Repeals the subcontractor listing requirement for construction bids made under the competitive sealed bidding process.

HEARING

DATE: Wednesday, February 11, 2015
TIME: 2:30 p.m.
PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee,

My name is Glenn Nohara and I have been preparing public works bid proposals for over 20 years.

I **support** H.B. 550, Relating to Procurement which proposes to eliminate the subcontractor listing requirement in public works procurement of construction, while also prohibiting bid shopping and bid peddling. The proposed changes are more consistent with the Model Procurement Code which does not require subcontractors to be listed at time of bid.

The current statute for competitive sealed bidding requires the name of subcontractors and the nature and scope of work to be performed by each, when the value of the work to be performed is greater than one per cent of the total bid amount. Please see the attached sample subcontractor listing forms. This is quite a lot of information to fill out when subcontractor bids come in just minutes before the prime contractors bids are due.

The rush to fill in these listing requirements have created more chances for bid errors by the prime contractors especially with the over one hundred license classifications and sub classifications. This has created the opportunity for a non-low bidder to be awarded the contract due to listing errors, differences of interpretation of nature and scope of work, and licensing issues with the listed subcontractors. The prime contractor is spending valuable time filling out these forms instead of working on the best possible price to submit to the agencies.

While proponents of the subcontractor listing argue that the listing requirement deters bid shopping or bid peddling, it is important to recognize that this requirement is triggering bidders to use the listing as a tool to find flaws in submitted low bids, thereby causing an inefficient bidding system and increasing costs to the taxpayer. In an effort to address proponents concern this measure also prohibits bid shopping and bid peddling and provides a venue for the subcontractor to raise their concern outside of the procurement process. This way the procurement of public works does not need to be stalled due to a technical or inadvertent flaw.

For these reasons, I support H.B. 550 and respectfully ask that this Committee pass this measure.

Sincerely,

A handwritten signature in black ink that reads "Glenn M. Nohara". The signature is written in a cursive, flowing style.

Glenn M. Nohara
President

All work not within the scope of work of the listed joint contractor(s) or subcontractor(s), shall be performed by the Offeror.

List the required joint contractors or subcontractors for this project in the following table. Write in the complete name of the Joint Contractor or Subcontractor, the Contractor License Number, and the Nature and Scope of work to be performed by the firm.

COMPLETE NAME OF JOINT CONTRACTOR OR SUBCONTRACTOR	CONTRACTOR LICENSE NUMBER	SPECIFIC DESCRIPTION OF THE NATURE AND SCOPE OF WORK

It is the **sole responsibility of the contractor** to review the requirements of this project and determine the appropriate licenses that are required to complete the project.

The following is a partial list of the contractor’s licenses that the Board of Water Supply anticipates are required to complete this particular project. This list is not all inclusive and additional licenses may be required:

Contractor License Type	Contractor Classification	Name of Joint Contractor or Subcontractor	License Number	Nature and Scope of Work

NOTE: The listing of joint contractors or subcontractors shall be typed or neatly printed.

LISTING OF SUBCONTRACTORS

In compliance with the provisions of the Hawai‘i Revised Statutes and Hawai‘i Administrative Rules, the bidder shall include in his bid the names of each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the public work construction contract. The bid shall also indicate the nature and scope of the work to be performed by such joint contractor or subcontractor.

Name/Address of Joint Contractor or Subcontractor	Nature and Scope of Work	Contractor License No.
Telephone: Fax:		
Telephone: Fax:		
Telephone: Fax:		
Telephone: Fax:		
Telephone: Fax:		
Telephone: Fax:		
Telephone: Fax:		
Telephone: Fax:		
Telephone: Fax:		
Telephone: Fax:		



LATE

98-055 KAMEHAMEHA HWY., C-6, AIEA, HI 96701 · PHONE (808) 831-5050 · FAX (808) 831-5055 · LIC # BC-19800

Via Email

February 10, 2015

Representative Angus L.K. McKelvey, Chair
Committee on Consumer Protection and Commerce
House of Representatives
The Twenty-Eighth Legislature, Regular Session of 2015
State Capitol
Honolulu, HI 96813

Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

SUBJECT: H.B. 550 Relating to Procurement

Time of hearing: Wednesday 11, 2015 @ 2:30 pm

My name is Patrick Miura, Vice President of Elite Mechanical and we **strongly oppose** HB 550.

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".

We have lost a couple of jobs to bid shopping. We were told by several general contractors that we were low bidder but someone else got the job. We do not mind if we lost the job fair and square but to find out there are "games" being played behind the scene is disturbing.

Bid shopping will discourage the number of subcontractors who are willing to submit a competitive bid. Why bid when we are low and still don't get the job?

You as a consumer should want to know who the general contractor is using and making sure they have the proper licenses and are qualified to do the work.

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 be "Patrick Miura", written over a horizontal line.

Patrick Miura
Vice President



RALPH S. INOUE CO LTD
GENERAL CONTRACTOR

2831 Awaawaloa Street
Honolulu, Hawaii 96819

T: 808.839.9002
F: 808.833.5971

License No. ABC-457
Founded in 1962

LATE

Sent Via E-Mail: CPCtestimony@capitol.hawaii.gov
& Via Fax at (808) 586-6161

February 10, 2015

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

SUBJECT: SUPPORT OF H.B. 550. RELATING TO PROCUREMENT. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Repeals the subcontractor listing requirement for construction bids made under the competitive sealed bidding process.

HEARING

DATE: Wednesday, February 11, 2015
TIME: 2:30 p.m.
PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee,

Ralph S. Inouye Co., Ltd. (RSI), General Contractor and member of the General Contractors Association of Hawaii (GCA), is **in support** of H.B. 550, Relating to Procurement which proposes to eliminate the subcontractor listing requirement in public works procurement of construction, while also prohibiting bid shopping and bid peddling. The proposed changes are more consistent with the Model Procurement Code and federal construction contracts which do not promote nor require subcontractors to be listed at time of bid.

In public work contracts current law requires the bidding contractor to submit a list, at bid time, of 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 may require as little as one or two subcontractors, while other more complicated projects can easily require the use of over twenty five subcontractors depending on the scope of the project. While this may sound easy in concept, the listing requirement has created more opportunity for bid errors by the prime contractors especially with the over one hundred license classifications under the jurisdiction of our Contractors Licensing Board. Quite often, the subcontractor listing requirement has resulted in a non-low bidder alleging that the apparent low bidder failed to list a required sub specialty contractor or that the listed subcontractor did not possess the required license to perform the work.

While proponents of the subcontractor listing argue that the listing requirement deters bid shopping or bid peddling, it is important to recognize that this requirement is triggering bidders to use the listing as a tool to find flaws in submitted low bids, thereby causing an inefficient bidding system and increasing costs to the taxpayer. In an effort to address proponents concern this measure also prohibits bid shopping and bid peddling and provides a venue for the subcontractor to raise their concern outside of the procurement process. This way the procurement of public works does not need to be stalled due to a technical or inadvertent flaw.

Please allow me to provide a specific example. In a recent award of a project in the neighborhood of \$20 million, five of the six bidders on the project listed a subcontractor who had recently lost its specialty license due to its RME leaving the company. Hence, at the time of bid, it was not licensed in the specialty that was listed, even though it had done many years of work in the specialty here in Hawaii. Though unrelated to bid shopping or bid peddling, all bids listing the unlicensed subcontractor were deemed non-responsive and the bid was awarded to the fifth bidder in line for an additional cost to the taxpayer of \$3.3 million over the second lowest bidder (the lowest bidder voluntarily withdrew its bid).

For these reasons, RSI supports H.B. 550 and requests that this Committee pass this measure.



Maul 202 Lalo Street • Kahului, HI. 96732-2924
 Phone: (808) 877-3902 • Fax: (808) 871-6828
 Service Dept: (808) 877-4040 • Fax: (808) 873-8199
 Oahu 2265 Hoonee Place • Honolulu, HI. 96819
 Phone: (808) 841-2112 • Fax: (808) 847-1991

Via Email

February 10, 2015

LATE

Representative Angus L.K. McKelvey, Chair
 Committee on Consumer Protection and Commerce
 House of Representatives
 The Twenty-Eighth Legislature, Regular Session of 2015
 State Capitol
 Honolulu, HI 96813

Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

SUBJECT: H.B. 550 Relating to Procurement

My name is Stephen Leis, President of Dorvin D. Leis Co., Inc. and I strongly oppose HB 550.

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. 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.

Bid shopping ultimately reduces competition by discouraging the number of subcontractors who are willing to submit a competitive bid.

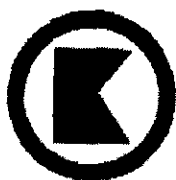
Furthermore, many times bid shopping results in the prime contractor using subcontractors that have not carefully analyzed the costs and logistics of a project, and who end up cutting corners to meet their budget, in turn producing low quality workmanship, causing delays or even defaulting on their work,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

Stephen Leis

LATE**KOKAMI ELECTRICAL SERVICE, INC.**99-1135 Iwaena St., Unit #12 • Aiea, Hawaii 96701
Phone: (808) 488-9779 • Fax: (808) 488-7991

February 10, 2015

To: House Committee On Consumer Protection & Commerce
The Honorable Representatives Angus McKelvey & Justin Woodson,
Committee Chairs

From: Wayne M. Kokami, President
KOKAMI ELECTRICAL SERVICE, INC.

Subject: HB 550 Relating to Procurement

Notice of Hearing

Date: Wednesday February 11, 2015
Time: 2:30pm
Place: House Conference Room 325
State Capitol
415 South Beretania Street

Dear Chairs McKelvey, Woodson and Committee Members:

Kokami Electrical Service, Inc. is a licensed electrical contracting firm doing business in the State of Hawaii. We strongly oppose the intent and purpose of HB 550.

The intent and purpose of HB 550 to repeal the subcontractor listing requirement and prohibiting bid shopping and bid peddling is flawed and is not in the best of procuring agencies and tax payers in general. This measure will not prevent all bid protest as some of the proponents will argue. Although we agree that there are bid protests that have and can delay and increase project costs, to place burden of these protests on the subcontractor listings is simply not true as depicted in Section 1 of the bill. The prime contractor has the responsibility to submit a proper bid that complies with all of the requirements including a subcontractor's bid list. The failure to do so is a failure to complete their due diligence. While bid deadlines are hectic, much of the problems describe in this bill can be resolved ahead of the deadlines just as any subcontractor submitting a bid must do.

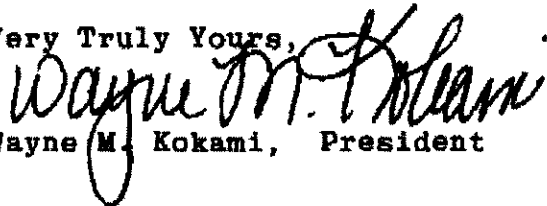
The practice of bid shopping or bid peddling usually happens after the prime contractor has submitted their bid. When this happens, only the prime contractor benefits from the additional reduction in the costs detriment of the subcontractors who originally submitted their best low bid to properly perform the job. All further reductions in their bids are the cause for change orders or substandard work because of the short-cuts or the use of substandard materials. We have experienced bid shopping in many of the private sector work we have contracted and in most cases only the prime contractor have enriched their selves.

In short, this bill prevents fairness to the subcontractors and in time would eliminate the only defense against bid shopping/peddling by eliminating the subcontractor listing. This bill will be detrimental to best business practices and will cause the deterioration and demise of contractors that perform work as subcontractors legitimately. Understand that subcontractors themselves are affected also by this subcontractor listing as we are sometimes work as prime contractors.

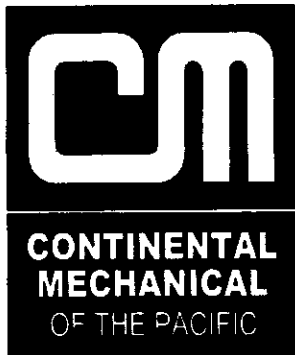
Based on the above, KOKAMI ELECTRICAL SERVICE, INC. strongly opposes the passage of HB 550 and urges this committee to stop this bill from moving forward.

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

Very Truly Yours,

A handwritten signature in black ink that reads "Wayne M. Kokami". The signature is written in a cursive style with a large, prominent "W" and "K".

Wayne M. Kokami, President



LATE

February 10, 2015

Representative Angus L.K. McKelvey, Chair
Committee on Consumer Protection and Commerce
House of Representatives
The Twenty-Eighth Legislature, Regular Session of 2015
State Capitol
Honolulu, HI 96813

Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

SUBJECT: H.B. 550 Relating to Procurement

My name is Samuel Fujikawa, Chief Executive Officer of Continental Mechanical of the Pacific and I **strongly oppose** HB 550.

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. 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. The State and City & County projects we bid are the only projects we know that giving the best numbers will result in guarantee winning a job.

Bid shopping ultimately reduces competition by discouraging the number of subcontractors who are willing to submit a competitive bid.

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. In fact, the subcontracting 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,
Continental Mechanical of the Pacific



Samuel T. Fujikawa
Chief Executive Officer

Ron's Electric, Inc.

Contractor's License No. C-19916



LATE

February 10, 2015

To: House Committee on Consumer Protection & Commerce
The Honorable Representatives Angus McKelvey & Justin Woodson, Chairs

From: Randall Nishimura, President
Ron's Electric, Inc.
1840 Leleiona Street, Suite A
Lihue, HI 96766

Subject: HB 550 Relating to Procurement

Notice of Hearing

Date: Wednesday, February 11, 2015
Time: 2:30 PM
Place: House Conference Room 325
State Capitol
415 South Beretania Street

Dear Chairs McKelvey, Woodson and Committee members:

Ron's Electric Inc. is a licensed electrical contractor doing business in the State of Hawaii for almost 30 years. We **strongly oppose** the intent and purpose of HB 550.

The intent and purpose of HB 550 to repeal the subcontractor listing requirement and prohibiting bid shopping/peddling means well, but is flawed and not in the best interest of the procuring agencies and taxpayers in general. This measure will not prevent bid protest as some of the proponents will argue.

While we agree that there are bid protests that have delayed and increased project costs, to place the burden of these protests on the subcontractor listings is not true as depicted in Section 1 of the bill. The prime contractor has the responsibility to submit a proper bid that complies with all of the requirements, including an accurate subcontractor's bid list. The failure to do so is a failure to complete their due diligence. While bid deadlines are hectic, many of the problems described in this bill can be resolved ahead of the deadlines just as any subcontractor submitting a bid must do. Though we primarily bid as subcontractors, we do on occasion bid as a prime contractor and find the process complicated, but fair at the same time.

The practice of bid shopping or bid peddling usually happens after the prime contractor has submitted their bid. When this happens, only the prime contractor benefits from the additional reduction in costs to the detriment of the subcontractor(s) who originally submitted their best low bid to properly perform the job. All further reductions in their bids are the cause for change orders or substandard work because of shortcuts or the use of substandard materials. We have

experienced bid shopping in the private work we have contracted and in most cases only the prime contractor have enriched their coffers. We were offered opportunities to bid on jobs AFTER bid submittal dates for three jobs on Kauai. While we did not submit bids, I do know that the contractors that ultimately got the jobs were not the initial low bidders.

In short, this bill supposedly prohibits the practice of bid shopping and bid peddling and at the same time eliminates the only defense against bid shopping/peddling by eliminating the subcontractor listing. Who will police these unsavory practices? The burden of proof is being placed upon the sub-contractor who depends on the prime contractors for their livelihood. This renders the provision that prohibits bid shopping/peddling toothless. This bill will be detrimental to best business practices and will cause the deterioration and demise of contractors that perform work as subcontractors legitimately.

We therefore **strongly oppose** the passage of HB 550 and urges this committee to stop this bill from moving forward.

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



Randall T. Nishimura
President



Hawaii Sheetmetal & Mechanical, Inc.

BC-27148 P.O. Box 4354 Hilo, HI 96720 Phone (808) 961-1199

Fax (808) 961-1188

LATE

February 10, 2015

Representative Angus L.K. McKelvey, Chair
Committee on Consumer Protection and Commerce
House of Representatives
The Twenty-Eighth Legislature, Regular Session of 2015
State Capitol
Honolulu, HI 96813

Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

SUBJECT: H.B. 550 Relating to Procurement

My name is Brian Ninomoto, President of Hawaii Sheetmetal & Mechanical Inc. and I **strongly oppose** HB 550.

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. 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.

Currently Federal Projects do not require general contractors to list which subcontractors they have used during the bidding procedures. Bid shopping and negotiating is common practice.

Bid shopping ultimately reduces competition by discouraging the number of subcontractors who are willing to submit a competitive bid.

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. 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,

Brian Ninomoto

TOMCO CORP.
General Contractors

LATE

February 10, 2015

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

SUBJECT: SUPPORT OF H.B. 550. RELATING TO PROCUREMENT. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Reveals the subcontractor listing requirement for construction bids made under the competitive sealed bidding process.

HEARING

DATE: Wednesday, February 11, 2015
TIME: 2:30 p.m.
PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee,

TOMCO CORP. is in support of H.B. 550, Relating to Procurement which proposes to eliminate the subcontractor listing requirement in public works procurement of construction, while also prohibiting bid shopping and bid peddling. The proposed changes are more consistent with the Model Procurement Code and federal construction contracts which do not promote nor require subcontractors to be listed at time of bid. In federal contracting, the absence of subcontractor listing provides an opportunity to further small business participation after a prime contractor has been awarded.

In public work contracts current law requires the bidding contractor to submit a list, at bid time, of 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 may require as little as one or two subcontractors, while other more complicated projects can easily require the use of over twenty five subcontractors depending on the scope of the project. While this may sound easy in concept, the listing requirement has created more opportunity for bid errors by the prime contractors especially with the over one hundred license classifications under the jurisdiction of our Contractors Licensing Board. Quite often, the subcontractor listing requirement has resulted in a non-low bidder alleging that the apparent low bidder failed to list a required specialty contractor or that the listed subcontractor did not possess the required license to perform the work.

While proponents of the subcontractor listing argue that the listing requirement deters bid shopping or bid peddling, it is important to recognize that this requirement is triggering bidders to use the listing as a tool to find flaws in submitted low bids, thereby causing an inefficient bidding system and increasing costs to the taxpayer. In an effort to address proponents concern this measure also prohibits bid shopping and bid peddling and provides a venue for the subcontractor to raise their concern outside of the procurement process. This way the procurement of public works does not need to be stalled due to a technical or inadvertent flaw.

For these reasons, TOMCO CORP. supports H.B. 550 and requests that this Committee pass this measure.

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



ROOFING & WATERPROOFING, INC.

LATE

LIC. #BC-8576

February 10, 2014

RE: House Bill No. 550

Relating to Procurement, Subcontractors, Listing and Practices

Hearing: Wednesday, February 11 at 2:30 P.M.

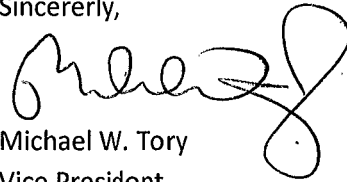
My name is Mike Tory, and I am Vice President of Tory's Roofing & Waterproofing, Inc. As a subcontractor, we oppose this bill to no longer require subcontractor listing on public works projects. The listing of subcontractors is our only assurance that our price is honored by a general contractor. Listing of subcontractors also assures the government agency that all work that is required is subcontracted to a qualified contractor with the necessary licensing to perform the work. I believe that some of the problems with recent bids has been that the General Contractor has not listed any subcontractor for a portion of work that the General Contractor is not qualified to perform. This is not the same as just forgetting to list a subcontractor. This omission may be an oversight on the contractor's part or may be a section that the General Contractor did not include in his price.

Although there is a clause that states that a General Contractor will not "shop" or "peddle" subcontractor prices, the burden of proof is left to the subcontractor which will not be feasible because a subcontractor may not have access to all the prices submitted to the General Contractor for a particular project. We have had experience with General Contractors that "shop" our prices on private, non-government projects and as a subcontractor our options are to submit a price as close to the bid time as possible or decide not to submit quotes to that particular general contractor. Unfortunately, I do not feel that the mere "prohibition" of the practice will not stop it from happening. Our estimators spend too much time putting together a viable subcontractor cost to allow this to be the benchmark price for other subcontractors the General Contractor may want to work with.

Page 2

I oppose this bill because I do not feel there is a problem with the listing of subcontractors as is currently required and do not feel that this is the reason for projects being delayed or protested. If there is any reason for the delays it is most likely caused by General Contractors not following the requirements as specified in the current regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael W. Tory". The signature is stylized with a large, looping flourish at the end.

Michael W. Tory
Vice President

LATE



February 10, 2015

Testimony To: Committee on Consumer Protection & Commerce
Representative Angus L. K. McKelvey, Chair

Presented By: Barbara Kono
Executive Director
Hawaii Wall & Ceiling Industry Association

Subject: Hearing on Wednesday, February 11, 2015 at 2:30 p.m.
Re: HB 550 – RELATING TO PROCUREMENT

I am Barbara Kono, Executive Director of the Hawaii Wall & Ceiling Industry Association. Our 27 union signatory drywall contractors are opposed to this bill because it is driven by General Contractors who do not have the best interest of the Sub Contractors in mind. The number of bid protests is small and this bill will not stop bid shopping or bid peddling.

Thank you for your time and attention.

A handwritten signature in black ink, appearing to read "B. Kono". The signature is written in a cursive, flowing style.

Office: 3375 Koapaka Street, Suite F220-43
Honolulu, Hawaii 96819
Phone: (808) 838-6517 • Fax: (808) 838-4515



LATE



FAXED
FEB 10 2015
BY: _____



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

February 10, 2015

586-6211
FAX No. 1 (808) 588-8181

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

SUBJECT: SUPPORT OF H.B. 550. RELATING TO PROCUREMENT. Prohibits Bid Shopping and Bid Peddling for the Competitive Sealed Bidding Process. Repeals the Subcontractor Listing Requirement for Construction Bids Made Under the Competitive Sealed Bidding Process.

HEARING

DATE: Wednesday, February 11, 2015
TIME: 2:30 p.m.
PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee,

ROBERT M.KAYA BUILDERS, INC. is **IN SUPPORT** of H.B. 550, Relating to Procurement which proposes to eliminate the subcontractor listing requirement in public works procurement of construction, while also prohibiting bid shopping and bid peddling. The proposed changes are more consistent with the Model Procurement Code and federal construction contracts which do not promote nor require subcontractors to be listed at time of bid. In federal contracting, the absence of subcontractor listing provides an opportunity to further small business participation after a prime contractor has been awarded.

In public work contracts current law requires the bidding contractor to submit a list, at bid time, of 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 may require as little as one or two subcontractors, while other more complicated projects can easily require the use of over twenty five subcontractors depending on the scope of the project. While this may sound easy in concept, the listing requirement has created more opportunity for bid errors by the prime contractors especially with the over one hundred license classifications under the jurisdiction of our Contractors Licensing Board. Quite often, the subcontractor listing requirement has resulted in a non-low bidder alleging that the apparent low bidder failed to list a required sub specialty contractor or that the listed subcontractor did not possess the required license to perform the work.

Support H.B. 550
February 10, 2015
Page Two

While proponents of the subcontractor listing argue that the listing requirement deters bid shopping or bid peddling, it is important to recognize that this requirement is triggering bidders to use the listing as a tool to find flaws in submitted low bids, thereby causing an inefficient bidding system and increasing costs to the taxpayer. In an effort to address proponents concern this measure also prohibits bid shopping and bid peddling and provides a venue for the subcontractor to raise their concern outside of the procurement process. This way the procurement of public works does not need to be stalled due to a technical or inadvertent flaw.

For these reasons, **ROBERT M. KAYA BUILDERS, INC.** supports H.B. 550 and requests that this Committee pass this measure.

Respectfully yours,

ROBERT M. KAYA BUILDERS, Inc.


Scott I. Higa
President

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



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 11, 2015

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

SUBJECT: **SUPPORT OF H.B. 550, RELATING TO PROCUREMENT.** Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Repeals the subcontractor listing requirement for construction bids made under the competitive sealed bidding process.

HEARING

DATE: Wednesday, February 11, 2015
TIME: 2:30 p.m.
PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred eighty general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

GCA is in support of H.B. 550, Relating to Procurement, which defines bid-shopping and bid-peddling and prohibits such practice, while also proposes to eliminate the subcontractor listing requirement for public works construction projects. Current law under HRS, Section 103D-302(b) requires the bidding contractor to list all subcontractors and joint contractors and their scope of work to be employed on public works projects unless the prime contractor has the required specialty license or will do the work themselves.

The GCA supports the repeal of the subcontractor listing law because it's requirement is increasing the cost of public works construction and delaying the delivery of projects due to contested bid submittals. Additionally, the mandated subcontractor listing requirement is not consistent with the *American Bar Association Model Procurement Code (ABA Model Procurement Code)*, which Hawaii's Procurement Code is modeled after. While we understand the concern with regard to bid shopping and bid peddling, as a solution this measure proposes to prohibit such practices to deter such activity in the future. Furthermore, we reject the arguments that allege that subcontractor listing is good public policy for reasons set forth below.

Background of the Subcontractor Listing Requirement

In the last decade the subcontractor listing requirement has been used beyond its legislative intent by many non-low bidders to identify faults of winning bidders who either fail to list a subcontractor or inadvertently and erroneously complete the list. As a result of the subcontractor

listing requirement, the failure to list such subcontractor altogether or a subcontractor whose work would total more than one percent of the total contract could trigger an inquiry which could lead to a formal bid protest whereby the non-lowest bidder could throw out the apparent lowest bidder from being awarded the contract. This has resulted in delays in awarding the contract to address the protest and in the event the low bidder is disqualified, there is additional cost to the agency and taxpayers if the contract is awarded to another bidder.

Some may argue that further training of procurement officers or review of contractor licensing laws could fix the subcontractor listing problems, however it is not that simple. Due to the problematic 2002 decision of the *Okada Trucking* case by the Hawaii Supreme Court and its erroneous interpretation of the general contractor's scope of work, the subcontractor listing requirement will continue to be problematic, unless some amendment to procurement requirement is made.

More recently, **the subcontractor listing has been one of the main reasons why public works projects are being awarded to non-low bidders.** Further the subcontractor listing requirement has led to administratively filed bid protests, resulting in increased cost of public projects, delay of contract award and further administrative burden for affected agencies. One agency reported that the listing law and subsequent awards to non-low bidders have cost over eleven million dollars (\$11 million) since 2005 alone.

The repeal of the subcontractor listing would curb qualified low bids from being thrown out for mere technicality or an error in information on the subcontractor listing. **General contractors have difficulty in ensuring listed subcontractors information is accurate and correct because most times bid prices from subcontractors are received right before the bid is due - i.e. minutes before bid is due. Due to the practices of subcontractors holding their prices until the last minute, the listed subcontractor's information may contain incorrect or incomplete information which can disqualify a prime contractor's bid as being non-responsive.** Also, changes in the licenses by the Contractors' License Board and creation of new C-68 licenses can result in a listed subcontractor who was previously qualified to do a specific sub craft now being considered unqualified and the bid considered unresponsive.

Hawaii's Procurement Law should follow the ABA Model Procurement Code

For the reasons above, it is important to note that the *ABA Model Procurement Code* has no reference or requirement to a mandatory subcontractor listing form. The *ABA Model Procurement Code* is the model code utilized by numerous states in delivering state and local spending in the procurement of goods, supplies, equipment, services, and construction. It would be beneficial for Hawaii to adopt the current provisions of the *ABA Model Procurement Code* to ensure proper delivery of publicly funded goods and services. Bid preferences and special interests have been embedded in Hawaii's procurement code making it difficult for the Code to properly deliver goods and services as intended by the Code. In order for the Procurement Code to apply equally and uniformly in the delivery of services and goods the elimination of bid preferences and special interests are necessary.

2013 Procurement Task Force pursuant to SCR 92, SD2

For the past two years major public works procurement agencies, GCA and other interested stakeholders have been participating in the Procurement Task Force convened by the legislature pursuant to Senate Concurrent Resolution 92, SD2 (2013) (SCR 92). SCR 92 requested the Comptroller to Establish a Task Force to Study the State Procurement Code and Identify Amendments that Would Increase Economy, Efficiency, Effectiveness, and Impartiality in the Procurement of Public Works Construction Projects. The subcontractor listing requirement was one of four issues of importance identified by the Task Force that required resolution. The report will reflect that the members were split on the position with regard to repeal of the subcontractor listing. However, it is important to note that three government agencies that regularly bid public works construction projects, including CIP projects voted in favor of repealing the listing requirement, particularly University of Hawaii, City and County of Honolulu and the Department of Education.

Important to Move this Bill out of Committee to Continue Conversation

The GCA appreciates a hearing being on this very important issue and respectfully requests that this bill be moved out of Committee to further extend the conversation and potentially find some language that all parties may be able to agree on.

The subcontractor listing law has resulted in increased cost for taxpayers, delay in delivery of much needed projects, and lapsing of funds for important projects. GCA supports H.B. 550 in an effort to address the non low-bid awards due to mostly technical and non-substantive errors of the bidding contractor that could be cured or resolved prior to signing of the contract, nor .

Thank you for this opportunity to **support** for this important measure and we respectfully request the Committee to move this measure forward.