



**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

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<http://spo.hawaii.gov>

**TESTIMONY  
OF  
SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE**

**TO THE SENATE COMMITTEE  
ON  
CONSUMER PROTECTION AND COMMERCE  
MARCH 21, 2016; 3:00 P.M.**

**SB3092 SD2 HD1 RELATING TO PROCUREMENT**

Chair McKelvey, Vice-Chair Woodson, and members of the committee, thank you for the opportunity to submit testimony on SB3092 SD2 HD1.

The State Procurement Office (SPO) OPPOSES this measure.

This measure amends Hawaii Revised Statutes (HRS) §103D-302(g) by allowing the procurement officer the discretion, after bid opening, to consider a listed subcontractor with a currently defective license as a valid license in order to meet the subcontractor listing requirement of HRS §103D-302(b) as long as the subcontractor is fully licensed at time of award or within sixty (60) days. This measure aims to address protests by aggrieved bidders based on defects in the subcontractor listing associated with the lowest-responsive responsible bidder.

HRS §103D-302, Competitive Sealed Bids, subsection (b) requires all bids for construction include the name of each firm to be engaged by the bidder as a subcontractor in the performance of the contract and the nature and scope of the work to be performed by each. After bids are publicly opened State agencies review each bid for responsiveness and compliance with the bid requirements. Checking that both the general contractor (bidder) and the subcontractors listed are licensed to perform the work is part of due diligence State entities perform after bid opening and prior to award to ensure the contractor is fully capable of performing the work.

The current version HRS §103D-302(g) is a provision in the procurement code that precludes changes to bids received after the bid due date and time except in limited circumstances and only for minor mistakes in bids that are not prejudicial to public interest or fair competition. The rules established to implement this code provision provide examples of waivable mistakes and consist of instances such as arithmetic errors.

SPO strongly believes subcontractors whose license has been suspended or forfeited is a serious issue and a situation that is regulated by the Department of Commerce and Consumer Affairs (DCCA) Contractor Licensing Board under HRS §444 in order to protect the public interest. SPO's serious concerns with this measure are based on our policy considerations discussed below.

- Responsibility for the integrity of the subcontractor listing required by HRS §103D-302(b) currently rests solely with the Prime Contractor bidding the work.

The Prime contractor bidding on the work is ultimately responsible for the integrity of the subcontractor list submittal and for proposing responsible subcontractors duly licensed to perform the work in Hawaii in accordance with HRS §444. Under the current law the sole responsibility for both the list and the integrity of its contents is squarely on the prime contractor. As such, that prime is responsible for ensuring listed subcontractors are licensed to perform the work proposed and also for identifying subcontractors that have issues with licensing and other responsibility issues. Then, it is the responsibility of the Prime Contractor to decide the effect any defective licensing issues have on whether they utilize that subcontractor's quote as part of their bid to the government. If, in the process of conducting due diligence, a Prime discovers a subcontractor has a defect in their licensing then the Prime needs to decide whether or not to include that subcontractor in their bid and risk any negative determinations a procurement officer makes based on that defect.

- Responsibility for the integrity of the subcontractor listing required by HRS 103D-302(b) would be shifted to the Procurement Officer, by the proposed amendment to subsection (g), and is therefore inappropriate.

This measure would effectively relieve the Prime Contractor from a certain level of due diligence and effectively shift responsibility to the Procurement Officer for both: (1) detecting a potential defect with a subcontractor's license, and (2) researching WHY the subcontractor has a defective license.

This measure would place the onus on the Procurement Officer to then:

- Discover that there is a defect with the proposed subcontractor's license, then
- Determine the nature of what caused the license suspension or forfeiture, then
  - Determine if the defect or forfeiture can be remedied, and
    - If so, can the defect be remedied prior to award or within 60 days?
    - If so, weigh the public interests of the state and others bidders submitting bids without defects against delaying an award to allow a subcontractor time to resolve their licensing issues; or
  - Determine whether or not to contact the DCCA Contractor's Licensing Board to report the subcontractor for engaging in contracting without a license in order to protect the public.

While arguments related to a prime contractor's ability to check and rely on the DCCA Contractor's Licensing Board website is noted but SPO suggested the solution to those issues should be with supporting the Board's website and administration with sufficient funds to bolster their system. Providing support for the DCCA licensing website is far more preferable to the solution suggested by this proposed bill which would completely relieve the prime bidder from ever performing due diligence prior to bid opening since the bill essentially places the burden on the procurement officer to figure out all licensing issues.

While usually Procurement Officer's prefer to have a high level of discretion, in this case the discretion granted to the Procurement Officer could result in an obligation to the subcontractor with a defective license to exercise their discretion to allow the subcontractor to remedy their licensing defect prior to award. This is highly prejudicial to bidders with fully compliant bids who utilize fully licensed subcontractors. It could also be detrimental to the public works projects and

the public interest since HRS §444 is established to protect the public from unlicensed contractors.

- The authority to regulate contractor licensing lies with the DCCA – Contractor Licensing Board.

The Contractor Licensing Board has the authority to revoke, suspend, and use other remedies associated with licensing as a means of enforcement of their rules and regulations in order to protect the public. SPO is concerned that this measure may compromise the Board's authority. At times agencies and Boards have only so many tools in their tool box to enforce their regulations and SPO is concerned this measure may circumvent, hinder, or belittle Board actions.

For example, SPO is very concerned about allowance to consider an invalid license as valid since review of HRS §444 reveals that a contractor is prohibited from even engaging in contracting while they are on inactive status for failure to pay renewal fees, HRS §444-15(c). While it seems the penalty for failure to pay renewal fees is a minor infraction of the law, it must be noted that the DCCA Contractor Licensing Board deems it significant enough to prohibit contractors from contracting until the defect is remedied.

SPO believes the testimony submitted by both the DCCA Contractor Licensing Board and the Board Administrator is most persuasive and supports SPO's policy concerns with this measure. See attached. In essence, this measure would allow HRS §444 to be circumvented at the bid stage and begs the question on whether the procurement officer should, in fact, notify the DCCA Contractor Licensing Board of the infraction since "engaging in contracting" includes submitted bids.

This measure's attempt to address protests based on defective subcontractor listings will cause even more uncertainty, administrative burden and more protests based on uncertainties that would be caused by post-bid-opening actions mandated upon the Procurement Officer and be circumvent the protective statutes set forth in HRS §444 established to protect the public in these matters.

Thank you

Lindemann Construction Inc.  
500 Ala Kawa St. #216-J  
Honolulu, HI 96817

Sent via email to CPCtestimony@capitol.hawaii.gov  
Fax to (808) 586-6211

INSERT DATE

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

SUBJECT: **SUPPORT OF S.B. 3092, SD2, HD1, RELATING TO PROCUREMENT.** Authorizes procurement officers to consider a previously licensed and listed subcontractor's license as valid; provided that certain conditions are satisfied. (SB3092 SD2, HD1)

HEARING

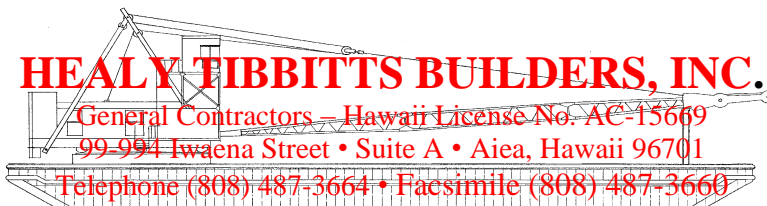
DATE: Monday, March 21, 2016  
TIME: 3:00 p.m.  
PLACE: Conference Room 325

Dear Chair McKelvey and Vice Chair Woodson and Members,

**Lindemann Construction Inc. supports** S.B. 3092, SD2, HD1, Relating to Procurement, which would amend Section 103D-302(g) by authorizing the procurement officer to consider a previously licensed and listed subcontractor's license as valid provided certain conditions are met. This measure would prevent an otherwise responsive bid from being thrown out for largely technical reasons related to a listed subcontractor's license status at bid time, provided all listed subcontractors are appropriately licensed within 60 days of bid opening or by the time of Award, whichever is sooner. The amendment would only allow previously licensed and listed subcontractors within their respective scopes of work to cure its status within the stated time limits.

The procurement of public works has been significantly impacted by issues raised by bidders relating to the subcontractor listing requirement and continues to be an area prone to informal inquiries and bid protests. As a result, the subcontractor listing requirement has caused delay in project award, increases to overall costs of project and lapse of project funding. GCA has identified over 43 projects affected by the subcontractor listing requirement in the past three years, which resulted in additional costs, not including time lost, of over \$26 million dollars.

For these reasons, we ask this Committee to pass this measure out. This amendment suggests a change, which is similar to what is already done for many federal-aid projects and would significantly and positively improve the procurement of public works construction. Thank you for your consideration.



March 20, 2016

Sent Via E-Mail: [CPCtestimony@capitol.hawaii.gov](mailto:CPCtestimony@capitol.hawaii.gov)

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

SUBJECT: **SUPPORT OF S.B. 3092, SD2, HD1, RELATING TO PROCUREMENT.**  
Authorizes procurement officers to consider a previously licensed and listed subcontractor's license as valid; provided that certain conditions are satisfied. (SB3092 SD2, HD1)

HEARING

DATE: Monday, March 21, 2016

TIME: 3:00 p.m.

PLACE: Conference Room 325

Dear Chair McKelvey and Vice Chair Woodson and Members:

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. **supports** S.B. 3092, SD2, HD1, Relating to Procurement, which would amend Section 103D-302(g) by authorizing the procurement officer to consider a previously licensed and listed subcontractor's license as valid provided certain conditions are met. This measure would prevent an otherwise responsive bid from being thrown out for largely technical reasons related to a listed subcontractor's license status at bid time, provided all listed subcontractors are appropriately licensed within 60 days of bid opening or by the time of Award, whichever is sooner. The amendment would only allow previously licensed and listed subcontractors within their respective scopes of work to cure its status within the stated time limits.

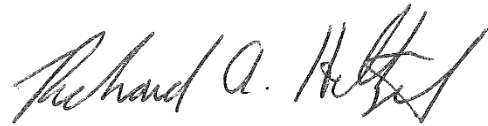
The procurement of public works has been significantly impacted by issues raised by bidders relating to the subcontractor listing requirement and continues to be an area prone to informal inquiries and bid protests. As a result, the subcontractor listing requirement has caused delay in project award, increases to overall costs of project and lapse of project funding. GCA has identified over 43 projects affected by the subcontractor listing requirement in the past three years, which resulted in additional costs, not including time lost, of over \$26 million dollars.

**Healy Tibbitts Builders, Inc.**

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For these reasons, we ask this Committee to pass this measure out. This amendment suggests a change, which is similar to what is already done for many federal-aid projects and would significantly and positively improve the procurement of public works construction. Thank you for your consideration.

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 style with a large, stylized initial "R".

Richard A. Heltzel  
President

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



**GCA of Hawaii**  
GENERAL CONTRACTORS ASSOCIATION OF HAWAII  
Quality People. Quality Projects.

Uploaded via Capitol Website

March 21, 2016

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

SUBJECT: **SUPPORT OF S.B. 3092, SD2, HD1, RELATING TO PROCUREMENT.**  
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HEARING

DATE: Monday, March 21, 2016  
TIME: 3:00 p.m.  
PLACE: Conference Room 325

Dear Chair McKelvey and Vice Chair Woodson and Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred seventy general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. 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 **supports** S.B. 3092, SD2, HD1 Relating to Procurement, which would amend Section 103D-302(g) allowing the procurement officer the ability to determine whether a listed subcontractor's license is valid at award. This measure would prevent a bid from being thrown out for reasons related to a listed subcontractor's status based on Chapter 444 requirements. This amendment would still require that all listed subcontractors be properly licensed at award; however it would preclude a prime bidder being penalized and found non-responsive because its subcontractor may have had an issue with their compliance under Chapter 444, HRS regarding requirements of workers compensation, insurance, bond, renewal fees, and dissociation of its Responsible Managing Employee (RME). The amendment would only allow previously licensed and listed subcontractors within their respective scopes of work to cure its status before award or within sixty days of bid opening.

The procurement of public works has been significantly impacted by issues raised by bidders relating to the subcontractor listing requirement and continues to be an area prone to informal inquiries and bid protests. As a result, the subcontractor listing requirement has caused delay in project award, increases to overall costs of project and lapse of project funding. In the past three years, GCA has identified over 43 projects affected by the subcontractor listing requirement, which resulted in additional costs, not including time lost, of over \$26 million dollars.

For these reasons, we respectfully request that you pass this measure increase efficiency in the procurement of public works construction. Thank you for your consideration.

SB 3092

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**NOTICE TO BIDDERS**

(Chapter 103D, HRS)

SEALED BIDS for:

**HONOAPIILANI HIGHWAY SHORELINE  
IMPROVEMENTS AT OLOWALU  
Federal-Aid No. NH-030-1(052)  
District of Lahaina  
Island of Maui**

will be received at the:

  X   Contracts Office, Department of Transportation  
869 Punchbowl Street, Honolulu, Hawaii 96813

  X   Office of the District Engineer – Maui  
650 Palapala Drive, Kahului, Hawaii 96732

until 2:00 P.M.,   November 19, 2015   at which time and place(s) they will  
be publicly opened and read.

A compact disc containing the plans, specifications, proposal, contract forms, Conservation District Use Permit (CDUP), Notice of Intent (NOI), Notice of General Permit Coverage (NGPC), Storm Water Pollution Prevention Plan (SWPPP), Section 401 Application and Water Quality Certification (WQC), Macroinvertebrate Relocation Plan (MRP), Section 404 Department of Army Permit, Archaeological Monitoring Plan (AMP), and Special Management Area Permit (SMA) may be obtained from the above offices. Bids (hard copies) shall be submitted in a sealed envelope, and shall be on the Proposal Form provided on the compact disc furnished by said Department. Bids received after the established due date and time will not be considered.

**The project includes clearing and grubbing; removal of existing trees, concrete barriers, and guardrails; shoulder widening; culvert extension; placement of boulder fill along a portion of Honoapiilani**

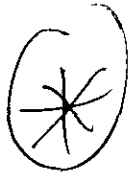


SB3092

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**Highway; installation of guardrails, signage, and pavement markings.**

Estimated construction cost is between \$1 million and \$5 million.



To be eligible for award, bidders must possess a valid State of Hawaii General Engineering Contractor's "A" license, prior to the award of the contract.

A pre-bid conference is set for 9:00 A.M. on October 30, 2015 at 601 Kamokila Blvd., Room 611, Kapolei, Hawaii 96707. All prospective bidders or their representatives (employees) are encouraged to attend, but attendance is not mandatory. Anything said at the conference is for clarification purposes and any changes to the bid documents will be made by addendum.

Persons needing special accommodations at the pre-bid conference due to a disability may contact, Sharen Cho-Ibanez, Project Manager, by phone at (808) 692-7551, by email at Sharen.H.Cho-Ibanez@hawaii.gov, or by facsimile at (808) 692-7555.

Campaign contributions by State and County Contractors. Contractors are hereby notified of the applicability of Section 11-355, HRS, which states that campaign contributions are prohibited from specified State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by the legislative body. For more information, contact the Campaign Spending Commission at (808) 586-0285.

The U.S. Department of Transportation Regulation entitled "Nondiscrimination in Federally-Assisted Programs of the U.S. Department of Transportation," Title 49, Code of Federal Regulations (CFR), Part 21 is applicable to this project. Bidders are hereby notified that the Department of Transportation will affirmatively ensure that the contract entered into pursuant to this advertisement will be awarded to the lowest responsible bidder without

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discrimination on the grounds of race, color, national origin or sex (as directed by 23 CFR Part 200).

The Equal Employment Opportunity Regulations of the Secretary of Labor implementing Executive Order 11246, as amended shall be complied with on this project.

The U.S. Department of Transportation Regulations entitled "Participation by Disadvantaged Business Enterprise in Department of Transportation Programs", Title 49, Code of Federal Regulations, Part 26 is applicable to this project. Bidders are hereby notified that the Department of Transportation will strictly enforce full compliance with all of the requirements of the Disadvantaged Business Enterprise (DBE) program with respect to this project.

Bidders are directed to read and be familiar with the Disadvantaged Business Enterprise (DBE) Requirements for Federal-Aid Projects regarding Disadvantaged Business Enterprise (DBE), which establishes the program requirements pursuant to Title 49 Code of Federal Regulations Part 26 and, particularly, the requirements of certification, method of award, and evidence of good faith.

For additional information on this project, contact Sharen Cho-Ibanez at (808) 692-7551, by email at Sharen.H.Cho-Ibanez@hawaii.gov, or by facsimile at (808) 692-7555.

The State reserves the right to reject any or all proposals and to waive any defects in said proposals for the best interest of the public.

  
FORD FUCHIGAMI  
Director of Transportation

Internet Posting: October 23, 2015

SB3092  
404**ELECTRONIC CODE OF FEDERAL REGULATIONS****e-CFR data is current as of March 17, 2014**

Title 23 → Chapter I → Subchapter G → Part 635 → Subpart A → §635.110

**Title 23: Highways****PART 635—CONSTRUCTION AND MAINTENANCE****Subpart A—Contract Procedures****§635.110 Licensing and qualification of contractors.**

(a) The procedures and requirements a STD proposes to use for qualifying and licensing contractors, who may bid for, be awarded, or perform Federal-aid highway contracts, shall be submitted to the Division Administrator for advance approval. Only those procedures and requirements so approved shall be effective with respect to Federal-aid highway projects. Any changes in approved procedures and requirements shall likewise be subject to approval by the Division Administrator.

(b) No procedure or requirement for bonding, insurance, prequalification, qualification, or licensing of contractors shall be approved which, in the judgment of the Division Administrator, may operate to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by, any responsible contractor, whether resident or nonresident of the State wherein the work is to be performed.

(c) No contractor shall be required by law, regulation, or practice to obtain a license before submission of a bid or before the bid may be considered for award of a contract. This, however, is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding. Prequalification of contractors may be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating.

(d) Requirements for the prequalification, qualification or licensing of contractors, that operate to govern the amount of work that may be bid upon by, or may be awarded to, a contractor, shall be approved only if based upon a full and appropriate evaluation of the contractor's capability to perform the work.

(e) Contractors who are currently suspended, debarred or voluntarily excluded under 49 CFR part 29 or otherwise determined to be ineligible, shall be prohibited from participating in the Federal-aid highway program.

(f) In the case of a design-build project, the STDs may use their own bonding, insurance, licensing, qualification or prequalification procedure for any phase of design-build procurement.

(1) The STDs may not impose statutory or administrative requirements which provide an in-State or local geographical preference in the solicitation, licensing, qualification, pre-qualification, short listing or selection process. The geographic location of a firm's office may not be one of the selection criteria. However, the STDs may require the successful design-builder to establish a local office after the award of contract.

(2) If required by State statute, local statute, or administrative policy, the STDs may require prequalification for construction contractors. The STDs may require offerors to demonstrate the ability of their engineering staff to become licensed in that State as a condition of responsiveness; however, licensing procedures may not serve as a barrier for the consideration of otherwise responsive proposals. The STDs may require compliance with appropriate State or local licensing practices as a condition of contract award.

[56 FR 37004, Aug. 2, 1991, as amended at 67 FR 75925, Dec. 10, 2002]

Need assistance?



**Genba Hawaii, Inc.**  
Civil Construction Consulting

March 20, 2016

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

SUBJECT: **SUPPORT OF S.B. 3092, HD1, RELATING TO PROCUREMENT.**

HEARING

DATE: March 21, 2016  
TIME: 3:00 PM  
PLACE: Conference Room 325

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

Genba Hawaii, Inc. **supports** S.B. 3092, HD1, Relating to Procurement. This bill attempts to address an area of procurement of public works that has cost taxpayers significantly by paying more for a project due to the disqualification of the lowest prime bidder because of subcontractor listing problems. This bill would allow the procurement officer to consider a listed subcontractors license as valid if the subcontractor was previously licensed to perform the scope of work indicated, and if at the time of award or within sixty days of bid opening, whichever is sooner, all listed subcontractors are appropriately licensed.

Considering that many subcontractor bids come in during the last hour before the prime bids are due, there is often barely enough time to fill in all the subcontractor depend information requested by the proposal documents, let alone check the current licensing status of each subcontractor. Required bid proposal subcontractor related information have included subcontractor names, nature & scopes of work, license numbers, addresses, telephone numbers, fax numbers, Hawaii products preference information, unit prices and extensions. Prime contractors barely have enough time to fill in all this information before the bid deadline given the lateness that subcontractors' submit their bids.

This measure will help to allow the procurement officer to award the contract to the lowest responsive bidder under HRS 130D-302 provided it is not prejudicial to the interest of the public or to fair competition.

We respectfully ask that the Committee pass this measure.

Yours truly,

Glenn M. Nohara  
President

**PRESENTATION OF THE  
CONTRACTORS LICENSE BOARD**

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE

TWENTY-EIGHTH LEGISLATURE  
Regular Session of 2016

Monday, March 21, 2016  
3:00 p.m.

**TESTIMONY ON SENATE BILL NO. 3092, S.D.2, H.D.1 RELATING TO  
PROCUREMENT.**

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Peter H.M. Lee, and I am the Chairperson of the Legislative Committee of the Contractors License Board ("Board"). Thank you for the opportunity to submit comments on Senate Bill No. 3092, S.D.2, H.D.1, which proposes to authorize procurement officers to consider a previously licensed and listed subcontractor's license as valid at the time of bid, provided that the subcontractor is appropriately licensed prior to the award or within sixty days of bid opening, whichever is sooner.

The Board is concerned with the proposed language that amends HRS section 103D-302 because it seems to allow a subcontractor with a defective license (i.e., forfeited, inactive, revoked, suspended, etc.) to be deemed valid as long as that subcontractor is properly licensed at the time of award or within 60 days after the bids have been opened. This appears to mean that as long as a person was once licensed as a contractor to perform the scope of work indicated, that person does not need to be re-licensed until the time of award or 60 days after bid opening.

The Board believes that this conflicts with the requirements of HRS chapter 444 and the Board's longstanding interpretation that a person must be licensed as a contractor at the time of submitting a proposal or bid (as well as at the time of award) on a construction project. The Board has consistently taken the position that a contractor's license is required when a person submits a bid on a construction project to another person, entity, or government agency. That is because the person who is submitting the bid is acting, advertising, or holding the person's self out as a contractor and must therefore be licensed at that time. An unlicensed contractor is subject to disciplinary action, including a fine.

In addition, the prime, general, or other specialty contractor that uses that unlicensed person's bid may also be guilty of aiding and abetting unlicensed activity. In that case, that contractor may also be subject to disciplinary action.

The Board is concerned about the regulatory uncertainty this bill would create and asks for assurance that if this measure is passed as is, the Board and the Regulated Industries Complaints Office still retain disciplinary jurisdiction over the subcontractors and general contractors involved in the bid. In other words, the Board would ask for clarification that the proposed amendments to HRS section 103D-302 to are intended to and will not override or negate the Board's disciplinary powers under HRS chapter 444 for unlicensed contracting.

Thank you for the opportunity to provide comments on Senate Bill No. 3092, S.D. 2, H.D. 1.

# **BIA-HAWAII**

**BUILDING INDUSTRY ASSOCIATION**

THE VOICE OF THE CONSTRUCTION INDUSTRY

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BIA-HAWAII

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## Testimony to the House Committee on Consumer Protection & Commerce Monday, March 21, 2016 3:00 p.m. State Capitol - Conference Room 325

### **RE: S.B. 3092 S.D. 2 H.D. 1: Relating to Procurement.**

Dear Chair Kawakami, Vice-Chair Kong, 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 is in **support** of S.B. 3092 S.D. 2 H.D. 1, Relating to Procurement. This bill proposes to amend Section 103D-104 and 103D-310 by permitting procuring agencies of public works construction contracts the ability to avoid throwing out a project for a technical and administrative matters.

The procurement of public works has been significantly impacted by issues raised by bidders relating to the subcontractor listing requirement and continues to be an area prone to informal inquiries and bid protests. As a result, the subcontractor listing requirement has caused delay in project award, increases to overall costs of project and lapse of project funding.

This bill would increase efficiency and fairness within the bidding system. We appreciate the opportunity to express our views on this matter.

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

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**LATE TESTIMONY**

March 21, 2016

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

**LATE**

Presented By: Tim Lyons, President

Subject: S.B. 3092, SD 2, HD 1 - RELATING TO PROCUREMENT

Chair McKelvey and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we oppose this bill. The SAH represents the following nine separate and distinct contracting trade organizations.

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 have comments only on this bill.



This bill deals with honoring a subcontractor's bid even if they were not properly licensed but they somehow manage to receive the license prior to the award. We are concerned that there is a bad precedent here.

Licensing is a prerequisite to acting (or bidding) as a contractor (Chapter 444 H.R.S.). An entity who is not legal should not be allowed to participate in the process. If the license is suspended or forfeited at bid time, the contractor (subcontractor or general contractor) should not be bidding. We agree with prior DOT testimony that agencies, as a "trustee of public moneys" mandates strict compliance. We also agree with SPO that this is all part of the due diligence that should be required of state/county contractors. It is not so much a problem to allow the general to post-qualify its subs, after the fact, but the truth is that the subcontractors without a valid license should not be bidding in the first place.

Thank you.