



Testimony by:  
FORD N. FUCHIGAMI  
DIRECTOR

Deputy Directors  
JADE T. BUTAY  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN  
DARRELL T. YOUNG

IN REPLY REFER TO:

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

February 26, 2016  
9:45 A.M.  
State Capitol, Room 211

**SB 3092, S.D. 1  
RELATING TO PROCUREMENT**

Senate Committee on Ways and Means

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The DOT **opposes** the intent of S.B. 3092, S.D. 1 that proposes to authorize procurement offices to consider a previously licensed and listed subcontractor's license as valid; provided that certain conditions are satisfied, and require subcontractors to submit a time stamped offer to a contractor two hours before the established bid deadline.

The proposed revisions appear inconsistent with the purpose of the Hawaii Procurement Code (HRS 103D), and the purpose of the Hawaii Contractor Licensing Laws (HRS 444).

HRS 103D allows for a bid to be corrected based on clearly defined "mistakes," including those that do not affect price, quantity, quality, or delivery. Having a forfeited or suspended license seems to be a material deviation that may affect at least the quality or delivery of the project. Moreover, HRS 103D-302(g) requires that after the bids are opened, "no changes in bid prices or other provisions of bids prejudicial to the interest of the public or to fair competition shall be permitted." The public interest and the requirement of ethical public procurement for the government agencies to "act as a fiduciary and trustee of public moneys" requires strict compliance and therefore, acceptance of a bid that includes a subcontractor whose license has been suspended or forfeited is not in line with the ethical considerations under the Procurement Code.

The HRS 444 suspension or forfeiture of a license does not include suspension or forfeiture due to a ministerial act. It includes suspension or forfeiture for failure to maintain worker's compensation insurance, liability insurance, and bond, as examples under HRS 444-11.1.

HRS Chapter 444 lists the repercussions for failure to maintain a license. Examples are: HRS 444-11.1...(d) forfeiture of all fees and contractor to apply anew. (e) fees to be paid, the imposition of a bond, and license restriction. HRS 444(f), "a licensee may,

within sixty days after receipt of the notification of the forfeiture, request an administrative hearing.” The impacts of failing to maintain a license are not immaterial.

Additionally, the submittal of a time stamped subcontractor offer at least two hours before the bid opening deadline appears to limit the autonomy of the contactor and subcontractor relationship.

Thank you for the opportunity to provide testimony.

DAVID Y. IGE  
GOVERNOR



SARAH ALLEN  
ADMINISTRATOR

PAULA A. YOUNGLING  
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

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TESTIMONY  
OF  
SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE  
ON  
WAYS AND MEANS  
February 26, 2016; 9:45 A.M.

SB3092 SD1 RELATING TO PROCUREMENT

Chair Tokuda, Vice-Chair Dela Cruz, and members of the committee, thank you for the opportunity to submit testimony on SB3092.

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). This measure also amends HRS §103D-310(a) by mandating that a subcontractor's bid to a general contractor in response to a government solicitation be submitted, and time stamped, two hours prior to the bid due date and time or be disqualified. 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 Proposals, 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.

SPO 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. SPO's concerns with this measure can be grouped based on our policy considerations as 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 licensed to perform the

work in Hawaii. 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 this measure 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:

- Determine the nature of what caused the license suspension or forfeiture, then
- Determine if the defect or forfeiture is ministerial, and then determine
  - If so, can the defect be remedied prior to award?
  - If not, 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.

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 since HRS §444 allows up to 60 days to resolve some licensing issues.

- 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. 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, even for "ministerial acts," 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 meets the definition of a "ministerial act" under this measure, it must be noted that the DCCA Contractor Licensing

Board deems it significant enough to prohibit contractors from contracting until the defect is remedied. This measure would allow HRS §444 to be circumvented at the bid stage.

- Suggested amendments to HRS §103D-310(a) would also effectively shift the responsibility for the integrity of the subcontractor list required by §103D-302(b) from the Prime Contractor to the Procurement Officer by forcing Procurement Officers to review not only the subcontractor list but also all associated subcontractor time-stamped quotes.

The amendment to HRS §103D-310(a) mandates that subcontractors submit quotes to the Prime Contractor two hours prior to the government bid due date and time. It also mandates that their quote be date and time stamped to evidence compliance. Subcontractors who do not comply with the two-hour requirement shall be disqualified. It seems this measure seeks to provide Prime Contractors, via statute, two hours to evaluate the integrity of a subcontractor's bid and the responsibility of the subcontractor as an entity prior to submitting their bid.

As stated above, under current law is it the sole responsibility of the Prime Contractor to ensure the integrity and responsibility of its listed subcontractors. As such, Prime Contractors can currently, without statute, mandate that quotes from prospective subcontractors be submitted at a specified due date and time. Prime Contractors have always had the ability to set any due date and time they want for receipt of subcontractor quotes in order to meet the ultimate government deadline. This measure seems to imply that the only way to make Prime Contractors perform some level of due diligence on their proposed subcontractors is by statute.

It is unclear from the measure who is actually required to "disqualify" the subcontractor for failure to meet the two-hour requirement. Even if the responsibility to "disqualify" a subcontractor's late quote rests with the Prime Contractor, this measure would then require the Procurement Officer to review the time-stamped subcontractor quotes for each listed subcontractor to ensure the Prime Contractor is not submitting late subcontractor quotes, even if from a fully licensed subcontractor.

This measure suggests it should only take the Prime Contractor one hour (1) and 59 minutes to perform due diligence on their proposed subcontractors prior to the bid deadline. The administrative burden on the Procurement Officer to ensure the Prime Contractor is performing due diligence far outweighs the burden on the Prime Contractor to perform due diligence on their subcontractors prior to the proposal due date.

This measure's attempt to address protests based on defective subcontractor listings may cause even more uncertainty, administrative burden and more protests based on post-bid-opening actions mandated upon the Procurement Officer.

Thank you

## BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU  
630 SOUTH BERETANIA STREET  
HONOLULU, HI 96843



February 26, 2016

KIRK CALDWELL, MAYOR

DUANE R. MIYASHIRO, Chair  
ADAM C. WONG, Vice Chair  
DAVID C. HULIHEE  
KAPUA SPROAT  
BRYAN P. ANDAYA

ROSS S. SASAMURA, Ex-Officio  
FORD N. FUCHIGAMI, Ex-Officio

ERNEST Y. W. LAU, P.E.  
Manager and Chief Engineer

ELLEN E. KITAMURA, P.E.  
Deputy Manager and Chief Engineer

The Honorable Jill N. Tokuda, Chair  
and Members  
Committee on Ways and Means  
State Senate  
Hawaii State Capitol, Room 211  
415 South Beretania Street  
Honolulu, Hawaii 96813


Dear Chair Tokuda and Members:

Subject: Senate Bill 3092, SD 1 Relating to Procurement

We oppose Senate Bill 3092, SD1 which, in part, authorizes procurement officers to consider a previously licensed and listed subcontractor's license as valid; provided that certain conditions are satisfied. This measure adds a very narrow exception for when a subcontractor's license is suspended or forfeited due solely to ministerial acts, but the license is restored prior to award. This will complicate the procurement process even more and likely lead to more protests.

Thank you for your consideration of our written testimony on Senate Bill 3092, SD1.

Very truly yours,



ERNEST Y. W. LAU, P.E.  
Manager and Chief Engineer

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

February 25, 2016

TO: HONORABLE JILL TOKUDA, CHAIR, HONORABLE DONOVAN DELA CRUZ,  
VICE CHAIR, SENATE COMMITTEE ON WAYS AND MEANS

SUBJECT: **SUPPORT OF S.B. 3092, SD1, RELATING TO PROCUREMENT.**

HEARING

DATE: Friday, February 26, 2016

TIME: 9:45 p.m.

PLACE: Conference Room 211

Dear Chair Jill Tokuda and Vice Chair Dela Cruz and Members,

Genba Hawaii, Inc. **supports** S.B. 3092, SD1, Relating to Procurement and the General Contractor Association of Hawaii's (GCA) proposed amendments. The current measure provides two revisions to HRS 103D-302: (1) allows a previously listed and licensed subcontractor to cure specific statutory requirements prior to award of the contract; and (2) requires a subcontractor to submit a time stamped offer to a prime contractor two hours before the established bid deadline; provided further that a subcontractor who does not comply with the two hour requirement shall be disqualified from consideration.

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 delays in project awards, increases to overall costs of projects and lapses of project funding.

The affected parties are continuing to work on this measure. We respectfully request that this Committee consider GCA's proposed amendments and pass this measure to allow work to continue on the language that would best address how to improve the procurement of public works construction.

Sincerely,

Glenn M. Nohara  
President

Attachments: GCA's proposed amendments

# S.B NO. 3092, SD1

## Proposed SD2

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### A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1           SECTION 1. The legislature finds that the delivery and  
2 award of public works construction projects can be hindered by  
3 bid challenges resulting in a lapse in funding and other  
4 procurement issues. Many times there are communications from a  
5 bidder indicating flaws or technical discrepancies in a low-  
6 bidder's proposal before a determination has been made that the  
7 low bidder is the responsible and responsive bidder. Several  
8 recent informal inquires and bid challenges related to  
9 subcontractor listing and licensing issues have caused major  
10 delays and cost increases for public works construction  
11 projects.

12           The legislature further finds that due to the large number  
13 of licenses available, it has become increasingly difficult for  
14 general contractors to verify whether a subcontractor has the  
15 proper license to perform the type of work that the  
16 subcontractor has been contracted to perform. Ensuring that  
17 subcontractors meet all of the necessary requirements to perform



# S.B NO. 3092, SD1

## Proposed SD2

1 contracted work on State and county projects will address  
2 licensing concerns and greatly minimize bid challenges  
3 pertaining to the verification of subcontractor qualifications  
4 and licensing.

5 The purpose of this Act is to authorize procurement  
6 officers to consider a previously licensed and listed  
7 subcontractor's license as valid; provided that certain  
8 conditions are satisfied, and require the prime bidder to submit  
9 their list of subcontractors and their respective scopes of work  
10 to a contracting agency two hours after the established bid  
11 deadline.

12 SECTION 2. Section 103D-302, Hawaii Revised Statutes, is  
13 amended by amending subsection (b) to read as follows:

14 "(b) An invitation for bids shall be issued, and shall  
15 include a purchase description and all contractual terms and  
16 conditions applicable to the procurement. If the invitation for  
17 bids is for construction, it shall specify that all bids include  
18 the name of each person or firm to be engaged by the bidder as a  
19 joint contractor or subcontractor in the performance of the  
20 contract and the nature and scope of the work to be performed by  
21 each[~~-~~]; provided that the bidder shall have two hours after the

# S.B NO. 3092, SD1

## Proposed SD2

1 closing of the bids to provide the name of each person or firm  
2 to be engaged by the bidder as a joint contractor or  
3 subcontractor in the performance of the contract and the nature  
4 and scope of the work to be performed by each; provided further  
5 that the bids shall be opened pursuant to subsection (d) only  
6 after the close of the two hour period. Construction bids that  
7 do not comply with this requirement may be accepted if  
8 acceptance is in the best interest of the State and the value of  
9 the work to be performed by the joint contractor or  
10 subcontractor is equal to or less than one per cent of the total  
11 bid amount."

12 SECTION 3. Section 103D-302, Hawaii Revised Statutes, is  
13 amended by amending subsection (g) to read as follows:

14 "(g) Correction or withdrawal of inadvertently erroneous  
15 bids before or after award, or cancellation of invitations for  
16 bids, awards, or contracts based on such bid mistakes, shall be  
17 permitted in accordance with rules adopted by the policy board.  
18 After bid opening no changes in bid prices or other provisions  
19 of bids prejudicial to the interest of the public or to fair  
20 competition shall be permitted~~(-)~~; provided that the procurement  
21 officer may consider a previously licensed and listed

# S.B NO. 3092, SD1

## Proposed SD2

1 subcontractor's license as valid if the subcontractor's license  
2 at bid time has been suspended or forfeited due to action taken  
3 pursuant to subsections 444-11.1(b), 444-15 or 444-21, Hawaii  
4 Revised Statute and rules of the Contractors License Board  
5 associated therewith, and the subcontractor's license is  
6 restored prior to the award.

7       Except as otherwise provided by rule, all decisions to  
8 permit the correction or withdrawal of bids, or to cancel awards  
9 or contracts based on bid mistakes, shall be supported by a  
10 written determination made by the chief procurement officer or  
11 head of a purchasing agency."

12       SECTION 3. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14       SECTION 4. This Act shall take effect upon its approval.

# S.B NO. 3092, SD1

## Proposed SD2

**Report Title:**

Procurement Officers; Competitive Sealed Bidding;  
Subcontractors; Licensing.

**Description:**

Authorizes procurement officers to consider a previously licensed and listed subcontractor's license valid; provided that certain conditions are satisfied. Requires prime contractor to submit subcontractor list to the agency two hours after the established bid deadline. Proposed SD2

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

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

Uploaded via Capitol Website

February 26, 2016

TO: HONORABLE JILL TOKUDA, CHAIR, HONORABLE DONOVAN DELA CRUZ,  
VICE CHAIR, SENATE COMMITTEE ON WAYS AND MEANS

SUBJECT: **SUPPORT OF S.B. 3092, SD1, RELATING TO PROCUREMENT.** Authorizes procurement officers to consider a previously licensed and listed subcontractor's license as valid; provided that certain conditions are satisfied. Requires subcontractors to submit a time stamped offer to a contractor two hours before the established bid deadline; provided that a subcontractor who does not comply with the two hour requirement is disqualified from consideration. (SD1)

HEARING

DATE: Friday, February 26, 2016  
TIME: 9:45 p.m.  
PLACE: Conference Room 211

Dear Chair Jill Tokuda and Vice Chair Dela Cruz 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 continues to work on perfecting this measure with the construction industry and other interested parties and respectfully requests this Committee pass this measure to allow work to continue on the language that would best address how to improve the procurement of public works construction. The GCA has proposed the attached draft amending SB 3092, SD1 with changes made as a result of comments made at the hearings held by the Senate Committee on Government Operations and discussions with interested parties which is attached to our testimony.**

GCA supports S.B. 3092, SD1, Relating to Procurement, which 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, thus saving taxpayer's money, but as mentioned will continue to work with other parties to improve this measure. This measure provides two solutions: (1) allows a previously listed and licensed subcontractor to cure specific statutory requirements prior to award of the contract; and (2) submit a time stamped offer to a contractor two hours before the established bid deadline; provided further that a subcontractor who does not comply with the two hour requirement shall be disqualified from consideration.

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.

### **Current SD1 version of SB 3092**

Section two of the bill would address a listed subcontractor's license status at bid time. Many times a prime bidder's entire bid is thrown out due to the revocation of a listed subcontractor's license status resulting from automatic actions taken by the Contractors License Board. A subcontractor's status may be in question due to their workers compensation or property damage insurance requirements or their individual Responsible Managing Employee (RME) may be in question, if there is a transition to a new RME.

Section three of the bill amends Section 103D-310, HRS and would require a subcontractor to submit a time stamped offer to a contractor two hours before the established bid deadline; provided further that a subcontractor who does not comply with the two hour requirement shall be disqualified from consideration. While this proposal may resolve some issues, it is not the best solution to address the issues surrounding the subcontractor listing requirement.

However, the attached proposed amendment, would amend Section 103D-302(b) requiring submission of the subcontractor listing two hours after the bid closes and will address problems associated with the subcontractor listing requirement. The proposed change in the attached amendment will permit the bidder to insure that all subcontractors who have submitted bids to the general contractor have met all of the requirements to perform work on state and county projects, including meeting all licensing, bonding and insurance requirements, as applicable. The additional time is necessary because in most cases the general contractor does not receive bid prices from the various subcontractors until shortly before the bid must be submitted to the state agency. This means that the general contractor does not have time to check whether the subcontractors who have submitted bids meet the requirements to work on the job, especially the proper licenses issued by the Contractors License Board. Given the large number of "C" (currently over 100 issued and growing), it becomes increasingly difficult for the general contractor to ascertain licenses and verify whether every subcontractor has the proper license to perform the work he has submitted a bid to do.

For these reasons, we respectfully request that you pass this measure to assist in increasing efficiency in the procurement of public works construction and to allow the parties to continue discussion on this important matter.

# S.B NO. 3092, SD1

## Proposed SD2

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### A BILL FOR AN ACT

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

1           SECTION 1. The legislature finds that the delivery and  
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13 of licenses available, it has become increasingly difficult for  
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# S.B NO. 3092, SD1

## Proposed SD2

1 contracted work on State and county projects will address  
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21 each[~~-~~]; provided that the bidder shall have two hours after the



# S.B NO. 3092, SD1

## Proposed SD2

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4 and scope of the work to be performed by each; provided further  
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# S.B NO. 3092, SD1

## Proposed SD2

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4 Revised Statute and rules of the Contractors License Board  
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12       SECTION 3. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14       SECTION 4. This Act shall take effect upon its approval.

# S.B NO. 3092, SD1

## Proposed SD2

**Report Title:**

Procurement Officers; Competitive Sealed Bidding;  
Subcontractors; Licensing.

**Description:**

Authorizes procurement officers to consider a previously licensed and listed subcontractor's license valid; provided that certain conditions are satisfied. Requires prime contractor to submit subcontractor list to the agency two hours after the established bid deadline. Proposed SD2

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



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February 26, 2016

TO: HONORABLE JILL TOKUDA, CHAIR, HONORABLE DONOVAN DELA CRUZ,  
VICE CHAIR, SENATE COMMITTEE ON WAYS AND MEANS

SUBJECT: **SUPPORT OF S.B. 3092, SD1, RELATING TO PROCUREMENT.** Authorizes procurement officers to consider a previously licensed and listed subcontractor's license as valid; provided that certain conditions are satisfied. Requires subcontractors to submit a time stamped offer to a contractor two hours before the established bid deadline; provided that a subcontractor who does not comply with the two hour requirement is disqualified from consideration. (SD1)

HEARING

DATE: Friday, February 26, 2016

TIME: 9:45 p.m.

PLACE: Conference Room 211

Dear Chair Jill Tokuda and Vice Chair Dela Cruz and Members,

My name is Lance M. Inouye and I am President of Ralph S. Inouye Co., Ltd. (RSI), a State of Hawaii General Contractor and member of the General Contractors Association of Hawaii.

RSI **supports** the intent of S.B. 3092, SD1, Relating to Procurement and the General Contractor Association of Hawaii's proposed amendments. The current SD1 version of the 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, thus saving taxpayer's money, but as mentioned will continue to work with other parties to improve this measure. This current measure provides two solutions: (1) allows a previously listed and licensed subcontractor to cure specific statutory requirements prior to award of the contract; and (2) requires a subcontractor to submit a time stamped offer to a prime contractor two hours before the established bid deadline; provided further that a subcontractor who does not comply with the two hour requirement shall be disqualified from consideration.

**The parties are continuing to work on this measure with the construction industry and other interested parties. We respectfully request that this Committee consider GCA's proposed amendments and pass this measure to allow work to continue on the language that would best address how to improve the procurement of public works construction.**

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 delays in project award, increases to the costs of construction projects and lapse of project funding. For these reasons please pass this measure to allow the parties to continue working on this measure to improve the procurement of public works construction services

# PLUMBING & MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII



Via Email

February 24, 2016

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

Senator Jill N. Tokuda, Chair  
Senator Donovan M. Dela Cruz, Vice-Chair  
Committee on Ways and Means  
The Senate  
The Twenty-Eighth Legislature, Regular Session of 2016

**GREGG S. SERIKAKU**  
EXECUTIVE DIRECTOR

Chair Tokuda, Vice-Chair Dela Cruz, and Members of the Committee:

## **SUBJECT: SB3092 SD1 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 SB3092 SD1.

The proposed requirement to have the subcontractors submit a time stamped offer to a prime bidder two hours before the established bid deadline is not a workable procedure because there is no way to verify whether the time stamp on the offer was accurate or doctored by the bidder. More importantly, any type of mandated allowance of time between the bid deadline and submission of the sublisting will only incite the predatory and unfair practice of bid shopping.

This bill also includes an allowance to accept the listing of previously licensed subcontractors whose licenses are not valid at time of bid due to ministerial acts pursuant to HRS 444, provided that the licenses are restored prior to award. While we agree with the intent of this allowance, we are concerned with the general nature of the description "ministerial acts pursuant to HRS 444". Our Association is working in good faith with representatives from the General Contractors Association of Hawaii (GCA) to clarify the issues this allowance is intended to remedy and **we propose that representatives from both parties continue to work together on language that will help to address each parties' specific concerns to minimize frivolous protests, while maintaining a fair bidding environment.**

This issue of the subcontractor listing and its effect on the procurement process has been debated numerous times in the past, and in 2013 the Legislature passed SCR92 which convened a task force to look at the overall efficiency of the procurement process for public works projects. From 2013-2015 this task force, which included the major state and county procurement agencies, labor groups, general contractors, subcontractors and various trade associations, convened regularly to gather data on procurement delays, discuss issues impacting the procurement process, and to provide possible solutions to these issues.

One of the most important duties of the task force was to collect accurate unbiased data on protests so that the parties involved could rationally determine whether a problem exists, the size of the problem if any, and to make measured recommendations on possible solutions.

In this regard, the data gathered by the task force indicated that the total number of protests during the 2013/2014 fiscal year actually represented a very small percentage (less than 5%) of the total construction jobs procured by the reporting agencies, and that the increase in the contract price of bids going to the non low bidder due to protests was less than 1%. These percentages are further minimized when segregating those protests where the subcontractor listing was identified (valid or not) as an issue. **These results clearly show that the number and costs of protests are quite minimal, and in most cases prime bidders were able to correctly follow the procurement rules.**

We therefore respectfully urge the committee to hold this bill in its current form.

Respectfully yours,



Gregg S. Serikaku  
Executive Director

# **SMCA** *Sheet Metal Contractors Association*

2850 Paa Street, Suite 207, Honolulu, Hawaii 96819  
Ph (808) 845-9393 – Fax (808) 845-9395 – email: smca@smcahi.com

**February 25, 2016**

Senator Jill N. Tokuda, Chair  
Senator Donovan M. Dela Cruz, Vice-Chair  
Senate Committee on Ways and Means

## **Re: Testimony in Opposition to SB3092 SD1 Relating to Procurement**

Aloha Chair Tokuda, Vice Chair Dela Cruz and Members of the Committee:

My name is Blake Parsons. I am the Executive Director of the Sheet Metal Contractors Association (SMCA), which represents over 23 sheet metal contractors across Hawaii.

**We strongly oppose SB3092 SD1** for the following reasons:

- **The bill opens the bid process to fraud, and incites predatory and unfair bid shopping.**
  - The State has no reliable procedure to ensure the time stamp, proposed in Section 4, is accurate and undoctored, which would provide opportunities for prime bidders to bid shop after-the-fact.
- **The bill, in its current form, is vague.**
  - The “Ministerial Acts” exception in Section 2 should specifically clarify such exceptions, and not be left to interpretation. While we support the intent of the Section to minimize frivolous protests, we propose that your Committee work with SMCA, the General Contractors Association of Hawaii (GCA), and other construction associations to draft language that maintains a fair bidding process.
- **The bill is unnecessary, and attempts to address the bid protests issue, of which less than 5% of projects were subjected.**
  - From 2013-2015, a Legislature-convened task force (SCR92), consisting of major state and country procurement agencies, labor groups, general contractors, subcontractors and various trade associations, collected accurate, unbiased data regarding projects protests. The task force, during the 2013-2014 fiscal year, found that contract prices increased by less than 1% due to protests, and that this increase was even less when the subcontractor listing was identified as the issue – valid or not valid.

For these aforementioned reasons, we respectfully urge the committee to hold the bill in its current form.

Mahalo nui loa,



Blake Parsons  
Executive Director

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

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

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

February 26, 2016

Testimony To: Senate Committee on Ways and Means  
Senator Jill N. Tokuda, Chair

Presented By: Tim Lyons, President

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

Chair Tokuda 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



This bill attacks the subject matter of subcontractor listing and we have already stated many times the reasons why we think subcontractor listing is an extremely important requirement for the preservation and existence of subcontractors and fair contracting procedures and why it should be retained.

The first part of 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 DISAGREE.

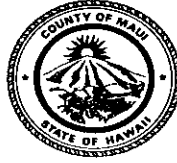
Licensing is a prerequisite to acting (or bidding) as a contractor (Chapter 444 H.R.S.). An entity who is not legal should not be allowed to participate in the process. There are also no time constraints on this licensing/participation exception. Is that two (2) days or two (2) years later? If the license is suspended or forfeited at bid time, the contractor (subcontractor or general contractor) should not be bidding.

The second part of this bill establishes a two (2) hour period for general contractors to play games with subcontractor bids. The reason for the subcontractor listing clause is to prevent this game playing and this bill opens the process. As we read it, the subcontractor will submit his time stamped offer to the general. If the general and ONE sub decide to hedge the process it will be simple to play with computer adjustments, time stamps and the two hours.

Subcontractor listing is to prevent bid chiseling by both bad and good contractors. This part of the bill needs to be deleted.

Thank you.

ALAN M. ARAKAWA  
Mayor



DANILO F. AGSALOG  
Director

MARK R. WALKER  
Deputy Director

COUNTY OF MAUI  
**DEPARTMENT OF FINANCE**  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

TESTIMONY  
OF  
GREG KING, CENTRAL PURCHASING AGENT  
COUNTY OF MAUI

TO THE SENATE WAYS AND MEANS COMMITTEE  
February 26, 2016 9:45 a.m..

SB3092 SD1  
RELATING TO PROCUREMENT

Chair Tokuda, Vice-Chair Dela-Cruz, and members of the committee, thank you for the opportunity to submit testimony on SB3092 SD1.

As the Central Purchasing Agent for the County of Maui, I am speaking for myself only, in opposition to this proposed legislation. My duties include determining the validity of contractors and subcontractors licensing for County of Maui construction projects, and handling related complaints and protests. So I'm well aware of the problem, which is:

**The website for the contractor's licensing board is frequently not up to date, and the status of a contractor's license as shown on the website is thus frequently incorrect.** From what I understand, the discrepancies often occur when a contractor has met a deadline, such as for providing an updated insurance certificate, but the updated information is not reflected on the website due to a data entry backlog at the licensing office. After the bid opening, the licensing office staff will frequently issue a written communication stating that the license was valid throughout the entire bid and award period.

Calling the licensing office is not a realistic option. There is never enough time or manpower, in the rush before a bid opening, for a contractor, subcontractor, or purchasing official to have any assurance that they will be able to call and reach someone at the licensing board office for the correct status. So everyone involved with the process relies on the often inaccurate information on the website.

The current practice puts a lot of risk on the contractor. Does the contractor choose subcontractor A at \$50,000, whose license says "forfeited" on the licensing board website, or does the contractor choose subcontractor B at \$55,000, whose license is listed in good standing.

If the contractor gambles and picks subcontractor A in the belief that that status listed on the website is inaccurate, he could gain a \$5,000 advantage over another contractor who plays it safer. On the other hand, if there is a real problem with the subcontractor and the licensing status is correct, the contractor's bid will eventually be rejected.

The current legislation, as I interpret it, simply codifies the current practice and relevant case law by allowing the purchasing officials the discretion to accept corrected licensing statuses up to the time of award. But it doesn't alleviate any of the contractor's risk in who he chooses. The word "may" is important because it allows the purchasing official time to correct the status, but also to have the discretion to be able to determine varying award times, especially in situations where lapsing funds become an issue. But anytime you use the word "may" and allow discretion you invite potential conflict or protests, or the appearance of impropriety by the procurement official, and that needs to be considered carefully.

The second part of this of this legislation, which states that the subcontractor shall provide his offer to the general contractors two hours before the bid opening, is o.k. from my perspective provided that the state and county procurement officials do not have any involvement in resolving any conflicts or protests between any contractors or subcontractors related to this provision, and any conflicts or protests do not delay or impact the timely awarding of a contract.

It is my opinion that a better fix to the current system would be to establish laws and provide more resources to keep the licensing office website current and accurate. Or to change the laws and software to disallow the change of a status to "forfeited" until the licensing office has had a chance to get through their backlog and make a determination that "forfeited" is correct. For the gamblers (contractors), perhaps a status could be created that states "minor update needed" (before award), to reduce their risk. Otherwise, the only other improvement step I can see is to eliminate the subcontractor listing requirement, which is the practice of the majority of the other states that use some version of the ABA model procurement code. The last option is not good for those who want to minimize subcontractor bid shopping, but it would drastically reduce bid protests and it would save the State a lot of money, time, and allow us to not reject the low bidder(s) much more often.

Thank you for your consideration.