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**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
LABOR AND PUBLIC EMPLOYMENT
February 2, 2017, 9:00 AM

HOUSE BILL 1180
RELATING TO PROCUREMENT

Chair Johanson, Vice-Chair Holt, and members of the committee, thank you for the opportunity to submit testimony on House Bill 1387. The State Procurement Office (SPO) opposes this bill.

Subcontractors do not have a contractual relationship with the Government (including all State and Political Subdivisions). The Government only has what is known as 'privity', (seen as a legally recognized relationship between two parties) with the prime contractor who submits the offer. When the prime submits its subcontractors in the offer, it is taking responsibility for the performance of its subcontractors. That is why we allow the prime to markup a profit percentage on the subcontractor's work. Thus, SPO feels it would be improper to add on 'subcontractor' at the end of the definition of contractor in lieu of the legal contractual relationship that exists with the one party and not the other.

The remainder of the edits includes subcontractors in the debarment process. However, without a legal, contractual relationship, this item then becomes moot.

Where Government requires subcontractors to adhere to certain terms and conditions, SPO's recommendation is to implement flow-down clause requirements for the prime's subcontractors. Federal procurement uses this flow-down mechanism in a variety of their contracts.

Thank you.



ELECTRICAL CONTRACTOR'S ASSOCIATION OF HAWAII

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January 31, 2017

To: House Labor & Public Employment Committee
Honorable Chairman Johanson & Vice Chairman Holt

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

Subject: HB 1180 Relating to Procurement

Notice of Hearing

Date: Tuesday, February 2, 2017
Time: 9:00 AM
Place: Conference Room 309
State Capitol
415 South Beretania Street

Dear Chair Johanson and Committee members:

The Electrical Contractors Association of Hawaii (ECAH) is a non-profit association representing over 100 electrical contractors doing business in the State of Hawaii. ECAH **opposes** the intent and purpose of HB 1180 that amends the definition of contractors and applies procurement sanctions to subcontractors for unethical violations. HRS 103-55.5 already connects Chapter 103D projects to HRS 104 (prevailing wage). HRS 104-1 already defines "contractor" to include subcontractors, as far as responsibility for prevailing wages. The subcontractor should not be held to the same provisions that the general or prime contractor with the State agency or department. The subcontractor is tied to the general or prime contractor via the sub-contract agreement for their scope of the sub contract work.

Based on the above, ECAH **opposes** the passage of HB 1180.

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

IRONWORKERS STABILIZATION FUND

February 2, 2017

Aaron Ling Johanson, Chair
Committee on Labor and Public Employment
House of Representative
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Dear Honorable Chair Johanson and Members of the Committee on Labor and Public Employment:

Re: Support for HB 1180 – Relating to Procurement

We are in support of HB 1180, Relating to Procurement; that applies procurement sanctions to unethical subcontractors.

The purpose of this bill strongly supports HRS Section 103D that the legislature has passed and the State of Hawaii has used to provide a fair and open process to bidding for public funded projects. We believe that this bill will ensure that only subcontractors that have no violations and do follow the law will be awarded public works projects.

Additionally this bill will ensure that all parties involved in publically funded projects will meet requirements that are stated in the Hawaii Revised Statutes. This bill will ensure that public funds are provided to those companies that does not break the law.

Consequently, we believe this bill will ensure and uphold the integrity of the process.

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

SAH - Subcontractors Association of Hawaii

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February 2, 2017

Testimony To: House Committee on Labor & Public Employment
Representative Aaron Ling Johanson, Chair

Presented By: Tim Lyons, President

Subject: H.B. 1180 - RELATING TO PROCUREMENT

Chair Johanson and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we are not in support of 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 are not in support of this bill because we do not have a direct contractual relationship with the State. That is to say, it is only the prime contractor who signs a contract with the State. It is contractually the general contractor who is responsible for the activities and the actions of the subcontractors if they have not acted responsibly. Typically the general contractors contract will call for certain measures to be taken by the general including expelling them from the job, imposing damages or terminating their contract. The prime contractor also selects the subcontractor and therefore has the responsibility for engaging those contractors whether they are a good subcontractor or a bad subcontractor.

Lastly, our feeling is that if we are going to be contractually directly tied into the procurement code in this manner, we should also be signing contracts directly with the State and, therefore, when we have payment issues we can go directly to the State for resolution of those issues.

Based on the above we do not support this bill as written.

Thank you.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Ninth Legislature, State of Hawaii
House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association

February 2, 2017

H.B. 1180 - RELATING TO PROCUREMENT

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 1180, which amends Chapter 103D, HRS by applying procurement sanctions to subcontractors for ethical violations. Presently, there are no sanctions for subcontractors who have engaged in unethical conduct on public works projects.

This loophole needs to be closed to ensure that contractors carefully select the subcontractors who work for them on public works projects. Contractors and subcontractors who perform work with public funds should be held to the same ethical standards. Essentially, this proposed legislation will promote greater accountability and integrity in the state procurement process.

Thank you for the opportunity to testify in strong support of H.B. 1180.

Respectfully submitted,

Randy Perreira
Executive Director



Randy Perreira
President

HAWAII STATE AFL-CIO

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The Twenty-Ninth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii State AFL-CIO
February 2, 2017

H.B. 1180 – RELATING TO
PROCUREMENT

The Hawaii State AFL-CIO strongly supports H.B. 1180 which amends the definition of contractor in Chapter 103D, Hawaii Revised Statutes, relating to the Hawaii Procurement Code and applies procurement sanctions to subcontractors for unethical violations.

H.B. 1180 simply amends the definition of contractor in Chapter 103D to ensure the same standards apply to subcontractors as they do with general contractors. General contractors or subcontractors who engage in unethical conduct on previous jobs should face the same sanctions regardless of their trade.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira
President

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GCA
GENERAL CONTRACTORS ASSOCIATION
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February 2, 2017

TO: HONORABLE AARON JOHANSON, CHAIR, HONORABLE DANIEL HOLT,
VICE CHAIR, COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

SUBJECT: **SUPPORT OF H.B. 1180, RELATING TO CONSTRUCTION CONTRACTS.** Requires the State Procurement Office, in conjunction with DOE, UH, DOT, and DAGS, to conduct an analysis and review of the Hawaii Public Procurement Code, specifically with regard to the awarding of construction contracts. Appropriates an unspecified amount of funds for the analysis and review.

HEARING

DATE: February 2, 2017
TIME: 9:00 a.m.
PLACE: Capitol Room 309

Dear Chair Johanson, Vice Chair Holt and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred 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.

H.B. No. 1180, Relating to Procurement proposes to amend the definition of contractor as used in Section 103D, HRS, to mean any person having contract with a government body including subcontractors.

The intent of this proposal is to permit the state and county contracting agencies to disbar a contractor including a subcontractor from future work on state projects, for serious acts of omission including failure to perform in work in a manner acceptable to the state.

The GCA supports the passage of H.B. No. 1180 Relating to Procurement, to insure individuals and firms who have not complied with terms of the project requirements in the past are not permitted to work on future projects. However, the bill as drafted will not permit the disbarment of a subcontractor who performs work for a general contractor since that subcontractor does not have a contract with the state. The general contractor is the prime contractor and the only entity with a contract with the state agency. To permit the disbarment of a subcontractor who works on a state and county projects the statute must articulate such.

Thank you for providing us the opportunity to present our views on this issue.

