

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR
MARA SMITH
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 586-0554
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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
GOVERNMENT OPERATIONS
March 16, 2017, 2:50 PM

HOUSE BILL 1229, HOUSE DRAFT 1
PROCUREMENT; SUBCONTRACTOR LISTING
RELATING TO PROCUREMENT

Chair Mercado Kim, Vice-Chair Ruderman and members of the committee, thank you for the opportunity to submit testimony on House Bill 1229, House Draft 1.

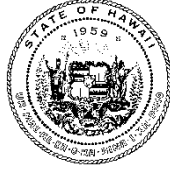
The State Procurement Office (SPO) **opposes** this bill and offers the following comments:

The SPO questioned what data points the previous amount shown in the original bill was based on. The HD1 version has a blank space denoting a dollar threshold. Who and how will this number be determined? Based on what statistics?

In addition, there is no statute or rule in the procurement code that mandates post-award contract management. Thus, any construction work that is conducted under the currently blank threshold will not have any formal process for checking the contractor(s) is licensed. There is an expectation that the Government hire responsible, licensed contractors to perform safe work on public facilities. The Government must do their due diligence and ensure the contractors they hire are licensed. Without a formal, mandatory process, it will be very easy for this check not to happen, and the risk of the public accessing unsafe government facilities along with the associated liability thereof will be high.

Thank you.

DAVID Y. IGE
GOVERNOR



RODERICK K. BECKER
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

TESTIMONY OF
RODERICK K. BECKER, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE ON GOVERNMENT OPERATIONS
ON
THURSDAY, MARCH 16, 2017
2:50 P.M.
CONFERENCE ROOM 224

H.B. 1229, H.D. 1

RELATING TO PROCUREMENT.

Chair Kim, Vice Chair Ruderman, and members of the Committee, thank you for the opportunity to submit testimony on H.B. 1229, H.D. 1.

The Department of Accounting and General Services (DAGS) opposes this bill and offers the following comments for the committee's consideration:

1. The Protest Mechanism Works: The protest process is a mechanism for settling disputes that arise during the procurement process for construction projects in an impartial and fair manner, which allows bidders to rely on the procurement process.
2. Perception: Large dollar value construction jobs, which are often the higher profile projects, are more likely to be protested because more is at stake. The public perceives that protests are a large problem in the procurement process; however, the statistics do not support this.
3. Basis for Proposed Changes: The source of the problem is not the protests or the statutory requirement to list subcontractors. It is the quality and completeness of the subcontractor listings. Therefore, the goal should be to reduce errors in the subcontractor listing.

4. Threshold Amount: Establishing a high threshold for the subcontractor listing requirement:
 - A. May result in the elimination of some protests;
 - B. May do little, if anything, to improve the accuracy of subcontractor listings, which would reduce the likelihood of protests for the larger and more high profile construction projects; and
 - C. May increase the potential for bid shopping on projects below the threshold value. It should be noted that cost reduction due to bid shopping does not get passed on to the government since the price offered is already determined, and bid shopping could also negatively affect the quality of construction.

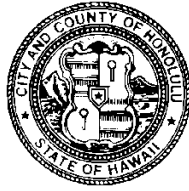
DAGS is also concerned that setting any dollar value threshold by statute for the subcontractor listing requirement will also require periodic review of the issue to determine whether the threshold needs to be adjusted.

5. Evaluation: DAGS recommends that all bills that may impact the construction procurement process be reviewed to ensure that they contribute to making the process more streamline, transparent, and efficient.

Thank you for the opportunity to submit testimony on this matter.

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 SENATE COMMITTEE ON GOVERNMENT OPERATIONS
March 16, 2017, 2:50 PM, Conference Room 224

HOUSE BILL 1229, H.D. 1, "RELATING TO PROCUREMENT"

Position: Support with Amendments

TO: The Honorable Chair Mercado Kim, Vice-Chair Ruderman and Members of the Committee on Government Operations

The Department of Budget and Fiscal Services, City and County of Honolulu (City), **supports** House Bill No. 1229, H.D. 1, Relating to Procurement.

Subcontractor listing requirements and licensing issues have caused protests and award delays. The listing of subcontractors has become a way in which bidders attack the responsiveness of an offer, resulting in awards to non-low bidders. This increases cost to the City and delays projects.

The City recommends removing the requirement altogether. Please see below for a recommendation for HB 1229, H.D. 1:

~~"(b) An invitation for bids shall be issued, and shall include a purchase description and all contractual terms and conditions applicable to the procurement. If the invitation for bids is for construction[,] with a total estimated contract value of more than \$ _____, it shall specify that all bids 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. Construction bids that do not comply with this requirement may be accepted if acceptance is in the best interest of the State and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than one per cent of the total bid amount."~~

The City agrees with the following language on page 2, lines 17 to 21: "...the federal government does not require the listing of subcontractors on any bid proposal. Furthermore, the 2000 American Bar Association's Model Procurement Code, the model for Hawaii's Public Procurement Code, does not include such a subcontractor listing requirement." Accordingly, the City recommends removing the requirement to list joint contractors and subcontractors on construction contracts.

Senate Committee on Government Operations
March 16, 2017
Page 2

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

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.

 **TOMCO CORP.**
General Contractors

March 14, 2017

TO: HONORABLE DONNA MERCADO KIM, CHAIR, HONORABLE RUSSELL RUDERMAN, VICE CHAIR, COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **SUPPORT OF H.B. 1229, HD1 RELATING TO PROCUREMENT.** Requires public procurement construction bids to list subcontractors and joint contractors only for contracts with an unspecified total value; provided that bids lacking this list may be accepted if in the State's best interest. (HB1229 HD1)

HEARING

DATE: March 16, 2017
TIME: 2:50 p.m.
PLACE: Capitol Room 224

Dear Chair Mercado Kim, Vice Chair Ruderman and Members of the Committee,

TOMCO CORP. supports the passage of H.B. 1229, HD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by limiting which projects the subcontractor listing requirement applies to depending on a dollar threshold. Under this proposed change, the subcontractor list would still be required but only on projects either over or under a certain dollar threshold.

Under current law HRS, Section 103D-302(b) requires the bidding contractor to list subcontractors and joint contractors and their scope of work to be employed on all public works projects unless the prime contractor has the required specialty license or will do the work themselves. The listing of subcontractors has become a way in which bidders attack the responsiveness of a proposal, resulting in awards to non-low bidders, increased cost to the state and delay of projects due to a technicality in the submitted subcontractor list. As a result not only does the lowest bidder and their listed subcontractors get disqualified from performing, but the state could end up paying millions of dollars more for the project. Therefore the lowest bidder and all of its listed subcontractors lose out on the opportunity to do work for the state or county. This bill proposes to limit which projects the subcontractor listing applies to based on the cost of the project, which will in turn limit these types of challenges. This is not a new concept as the State of Washington only requires a subcontractor list to be submitted for projects over \$1 million but only requires 3 trades to be listed electrical, plumbing and Heating, Ventilation and AC subcontractors.

Given the large number of "C" (currently over 100 issued and growing), it becomes increasingly difficult for the general contractor to ensure that their submitted listing includes all necessary information. This will not change the law that requires that all contractors on the project must be properly licensed, nor would it change the responsibility of the general contractor to ensure the project is completed.

TOMCO CORP. supports H.B. 1229, HD1 and recommends its passage.

1007 Makepono Street, Honolulu, Hawaii 96819
Telephone #: (808) 845-0755 Fax #: (808) 845-1021
Lic# ABC 16941



general contractor license #ABC 21576

Via E-mail: GVOTestimony@capitol.hawaii.gov
Facsimile: 1-808-587-7205

March 14, 2017

TO: HONORABLE DONNA MERCADO KIM, CHAIR, HONORABLE RUSSELL RUDERMAN,
VICE CHAIR, COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **SUPPORT OF H.B. 1229, HD1 RELATING TO PROCUREMENT.** Requires public procurement construction bids to list subcontractors and joint contractors only for contracts with an unspecified total value; provided that bids lacking this list may be accepted if in the State's best interest. (HB1229 HD1)

HEARING

DATE: March 16, 2017
TIME: 2:50 p.m.
PLACE: Capitol Room 224

Dear Chair Mercado Kim, Vice Chair Ruderman and Members of the Committee,

LYZ, Inc. supports the passage of H.B. 1229, HD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by limiting which projects the subcontractor listing requirement applies to depending on a dollar threshold. Under this proposed change, the subcontractor list would still be required but only on projects either over or under a certain dollar threshold.

Under current law HRS, Section 103D-302(b) requires the bidding contractor to list subcontractors and joint contractors and their scope of work to be employed on all public works projects unless the prime contractor has the required specialty license or will do the work themselves. The listing of subcontractors has become a way in which bidders attack the responsiveness of a proposal, resulting in awards to non-low bidders, increased cost to the state and delay of projects due to a technicality in the submitted subcontractor list. As a result not only does the lowest bidder and their listed subcontractors get disqualified from performing, but the state could end up paying millions of dollars more for the project. Therefore the lowest bidder and all of its listed subcontractors lose out on the opportunity to do work for the state or county. This bill proposes to limit which projects the subcontractor listing applies to based on the cost of the project, which will in turn limit these types of challenges. This is not a new concept as the State of Washington only requires a subcontractor list to be submitted for projects over \$1 million but only requires 3 trades to be listed electrical, plumbing and Heating, Ventilation and AC subcontractors.

Given the large number of "C" (currently over 100 issued and growing), it becomes increasingly difficult for the general contractor to ensure that their submitted listing includes all necessary information. This will not change the law that requires that all contractors on the project must be properly licensed, nor would it change the responsibility of the general contractor to ensure the project is completed.

LYZ, Inc. supports H.B. 1229, HD1 and recommends its passage.

A handwritten signature in black ink, appearing to read 'James N. Kurita', is written over a circular stamp or seal.

James N. Kurita
Vice President/ Chief Operating Officer



JAYAR CONSTRUCTION, INC.

1176 Sand Island Parkway ▼ Honolulu, Hawaii 96819
Tel (808) 843-0500 ▼ Fax (808) 843-0067
Contractor's License ABC-14156

March 15, 2017

To: HONORABLE DONNA MERCADO KIM, CHAIR, HONORABLE RUSSELL RUDERMAN, VICE
CHAIR, COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **SUPPORT OF H.B. 1229, HD1 RELATING TO PROCUREMENT.**

Requires public procurement construction bids to list subcontractors and joint contractors only for contracts with an unspecified total value; provided that bids lacking this list may be accepted if in the State's best interest. (HB 1229 HD1)

Hearing Date: March 16, 2017
Hearing Time: 2:50 P.M.
Hearing Place: Capitol Room 224

Dear Chair Mercado Kim, Vice Chair Ruderman and Members of the Committee,

Jayar Construction, Inc. is a locally owned General Contractor that has been in business since 1987. We currently have over a hundred employees and have been working on public works construction for many years.

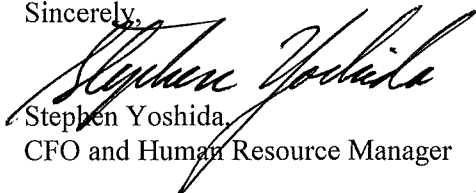
Jayar supports the passage of H.B. 1229, HD1, Relating to Procurement, which would amend the current subcontractor listing requirement by limiting which projects the subcontractor listing requirements apply to depending on a dollar threshold.

Under current law the bidding contractor must list subcontractors and joint contractors and their scope of work to be employed on all public works projects unless the prime contractor has the required specialty license and will do the work themselves. The listing of subcontractors is often used as a means for non- low bid contractors to attack the responsiveness of the low bid proposal, resulting in project delays and awards to non-low bidder often due to a technicality in the low bidder's subcontractors listing. As a result, the state often experiences lengthy delays in awarding projects and often at much higher costs.

Currently because of the large number of "C" specialty contractor categories (over 100 categories) it is difficult for the general contractor to ensure that their submitted subcontractors list includes all necessary information. This bill will not change the requirement that all contractors be properly licensed, nor would it change the responsibility of the general contractor to ensure the project is completed properly.

Jayar supports H.B. 1229, HD1 and recommends its passage.

Sincerely,



Stephen Yoshida,
CFO and Human Resource Manager



S & M SAKAMOTO, INC.
GENERAL CONTRACTORS

Via E-mail: GVOTestimony@capitol.hawaii.gov
Facsimile: 1-808-587-7205

March 16, 2017

TO: HONORABLE DONNA MERCADO KIM, CHAIR, HONORABLE RUSSELL RUDERMAN, VICE CHAIR, COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **SUPPORT OF H.B. 1229, HD1 RELATING TO PROCUREMENT.**
Requires public procurement construction bids to list subcontractors and joint contractors only for contracts with an unspecified total value; provided that bids lacking this list may be accepted if in the State's best interest. (HB1229 HD1)

HEARING

DATE: March 16, 2017
TIME: 2:50 p.m.
PLACE: Capitol Room 224

Dear Chair Mercado Kim, Vice Chair Ruderman and Members of the Committee,

S & M Sakamoto, Inc. **supports** the passage of H.B. 1229, HD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by limiting which projects the subcontractor listing requirement applies to depending on a dollar threshold. Under this proposed change, the subcontractor list would still be required but only on projects either over or under a certain dollar threshold.

Under current law HRS, Section 103D-302(b) requires the bidding contractor to list subcontractors and joint contractors and their scope of work to be employed on all public works projects unless the prime contractor has the required specialty license or will do the work themselves. The listing of subcontractors has become a way in which bidders attack the responsiveness of a proposal, resulting in awards to non-low bidders, increased cost to the state and delay of projects due to a technicality in the submitted subcontractor list. As a result not only does the lowest bidder and their listed subcontractors get disqualified from performing, but the state could end up paying millions of dollars more for the project. Therefore the lowest bidder and all of its listed subcontractors lose out on the opportunity to do work for the state or county. This bill proposes to limit which projects the subcontractor listing applies to based on the cost of the project, which will in turn limit these types of challenges. This is not a new concept as the State of Washington only requires a subcontractor list to be submitted for projects over \$1 million but only requires 3 trades to be listed electrical, plumbing and Heating, Ventilation and AC subcontractors.

Given the large number of "C" (currently over 100 issued and growing), it becomes increasingly difficult for the general contractor to ensure that their submitted listing includes all necessary information. This will not change the law that requires that all contractors on the project must be properly licensed, nor would it change the responsibility of the general contractor to ensure the project is completed.

S & M Sakamoto, Inc. **supports** H.B. 1229, HD1 and recommends its passage.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gerard Sakamoto", written in a cursive style.

Gerard Sakamoto
Chairman of the Board

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

March 16, 2017

TO: HONORABLE DONNA MERCADO KIM, CHAIR, HONORABLE RUSSELL RUDERMAN, VICE CHAIR, COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **STRONG SUPPORT OF H.B. 1229, HD1 RELATING TO PROCUREMENT.** Requires public procurement construction bids to list subcontractors and joint contractors only for contracts with an unspecified total value; provided that bids lacking this list may be accepted if in the State's best interest. (HB1229 HD1)

HEARING

DATE: March 16, 2017
TIME: 2:50 p.m.
PLACE: Capitol Room 224

Dear Chair Mercado Kim, Vice Chair Ruderman 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.

GCA is in **strong support** of H.B. 1229, HD1, Relating to Procurement, which requires that for construction contracts with a total value of more than a certain dollar amount (currently blank but previous draft was \$5,000,000) would require a list of subcontractors that a bidder intends to use to be submitted at time of bid. As an alternative, GCA is in favor of subcontractor listing not being required for projects over \$5,000,000 since the concern raised by the subcontractor community relative to the impact on smaller subcontractors. It is important to understand that all contractor licensing laws and compliance with chapter 104 requirements would remain in place with these proposed changes and will ensure all contractors on the project are subject to penalties including debarment for any violations. Furthermore, during the contract the designated agency has complete oversight over the project and has the ability to withhold payments or pursue debarment if one is non-compliant with terms of the contract or state or county law or regulations during the post award period of the contract. This measure together with HB 573, HD1, which proposes to prohibit bid shopping and bid peddling are important to address claims against such practices.

We bring to your attention that the federal agency, General Services Administration (GSA), removed the requirement for subcontractor listing in 1983 when they concluded that "bidding problems and protests related to the 'listing of subcontractors' requirement adversely affected the GSA construction program". By eliminating the bid listing requirement, the GSA stated the change

would ‘simplify procurement procedures, reduce paperwork burdens associated with procurement... and eliminate potential delays and financial losses experienced as a result of the listing requirement.’ *Associated General Contractors Association*. Website accessed on March 12, 2017 at <https://www.agc.org/industry-priorities/procurement/bid-shopping>. Furthermore, GCA’s national organization, Associated General Contractors of America (AGC), is resolutely opposed to the practice of bid shopping. AGC, the American Subcontractors Association, and the Associated Specialty Contractors issued this joint statement in 1995 on the issue of bid shopping and bid peddling: “Bid shopping or bid peddling are abhorrent business practices that threaten the integrity of the competitive bidding system that serves the construction industry and the economy so well.” AGC strongly believes that bid shopping and bid peddling cannot sustain long-term working relationships between prime and subcontractors.” *Id.*

Some examples of recent projects that encountered delays or increased costs due to subcontractor listing and caused delay in starting construction include, but are not limited to:

- Kamamalu Building (Oahu) - *Subcontractor listed by 4 lowest bidders considered non-responsive, thus awarded to fifth lowest bidder.*
 - Bid Date: May 2014
 - Project Awarded: *5 months after Bid Close* October 2014 at \$24.8 Million
 - **Awarded to 5th lowest bidder at increased of price of \$3.3 M over lowest bid**
- Kona Judiciary Complex (Big Island) *Issue raised over listed subcontractors among other issues.*
 - Bid Date: January 2016
 - Project Awarded: *10 months after Bid Close* October 2016 at \$79 Million
 - **Awarded to 3rd lowest bidder at increased price of \$1.7 M over lowest bid**
- Maui Car Rental Facility (Maui) – *Subcontractor listed alleged to be in error, among other protest issues that went to Office of Administrative Hearings for final disposition*
 - Bid Date: June 2014
 - Project Awarded: *18 months after Bid Close* December 2015 at \$331 million
 - **Awarded to 4th lowest bidder at increased price of \$3.8M over lowest bid**

Under current law HRS, Section 103D-302(b) requires the bidding general contractor to list subcontractors and joint contractors and their scope of work to be employed on all public works projects unless the general contractor has the required specialty license or will self-perform the work. This bill proposes to limit which projects the subcontractor listing applies based on the bid amounts for the project. This measure does not preclude a state agency from requiring the general contractor to disclose the list of subcontractors that will be performing related scopes of work for the project.

The GCA supports this bill because the challenges to the subcontractor listing requirements are increasing the cost of public works construction and delaying the delivery of projects due to bid protests. 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 models. Furthermore the federal government does not require subcontractor listing on any of their projects thus eliminating the risk of bid protests due to listing error(s). While we understand the concern with regard to bid shopping and bid peddling, the current subcontractor listing law interferes with the commercial

transaction between the general contractor and subcontractor and will continue to result in delays of project starts and awards to a higher bidder.

Background of the Subcontractor Listing Requirement

In the last decade, the subcontractor listing requirement has been used beyond its legislative intent and has become a strategy by the non-low bidders to identify errors in the low bid that either fails to list a properly licensed subcontractor or inadvertently commits a listing error in the haste to submit a bid by the deadline. 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 bid could be subject to a formal bid protest whereby a higher bidder could be awarded the contract in lieu of the apparent low bidder. These protests have historically resulted in delays in contract awards and, in the event the low bidder is disqualified, there is additional cost to the agency and taxpayers if the contract is awarded to the higher bidder.

More recently, **the subcontractor listing has been the primary reason why public works projects are being awarded to non-low bidders.** In addition to the delays and additional costs, the subcontractor listing requirement creates an administrative burden for the agencies to manage.

The subcontractor listing law has resulted in increased cost for taxpayers, delays in delivery of much needed projects, and the potential of lapsing funds for important projects. We appreciate this Committee's consideration of requiring that the subcontractor listing requirement be applied to projects either under or over a certain dollar threshold.

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

SAH - Subcontractors Association of Hawaii

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

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

March 16, 2017

Testimony To: Senate Committee on Government Operations
Senator Donna Mercado Kim, Chair

Presented By: Tim Lyons, President

Subject: H.B. 1229, HD 1 - RELATING TO PROCUREMENT

Chair Mercado Kim and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we vigorously 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

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

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 cannot support this bill. It has been tried when the legislature allowed UH to eliminate sublisting for projects under \$1,000,000.00. It was a failed experiment and some subcontractors completely stopped bidding to UH. That law was repealed three years later. Let's don't repeat that. This bill will be disastrous for subcontractors, the state procurement process and the taxpayer's.

Section 1 of the bill rubs us the wrong way just because it comes to a number of conclusions that are just not based on fact. Although the bill talks about the State having increased cost for public works projects due to the subcontractor listing requirement, it does not give you the courtesy of explaining why that might be. So, while on its face this bill appears to be about raising the threshold for requiring subcontractor listing, in reality it is an attack on the need for subcontractor listing.

The legislature was concerned about this area and created a Procurement Task Force. That Procurement Task Force met for over a year and a half studying a wide variety of procurement issues however, the majority of their time and effort was spent on the Subcontractor Listing Clause. It was the recommendation of that Task Force not to repeal the Subcontractor Listing Clause. That Task Force summarized that an average of 6.3% of all construction projects were protested in FY 13 and FY14 and although the preface of this bill (Section 1) would have you believe otherwise, the reasons included everything from failure to submit hard copies, mathematical errors, failure to submit bid bonds, incorrect bid bond amounts and yes, failure to list the required subcontractor. Contrary to the preface, the percent of cost increases due to protests was 0.34% in fiscal year 2013 and 0.01% in fiscal year 2014. The final report of the Procurement Task Force suggests that protests for bids was a result of the subcontractor listing requirement however it goes on further to say "...after considerable discussion and analysis of the data collected, it was noted that the negative impact of

the protest process was probably not as substantial as first thought and is not likely to outweigh its merits".

Again, this does not tell us why, and as the Task Force discovered, while some of the protests were over subcontractor listing, it was over issues of missing or unlicensed subcontractors. So in other words, where a general contractor forgot to list a sub or listed the wrong sub, or listed an unlicensed subcontractor, all items that fall into the responsibility of the general contractor, it was the Subcontractor Listing Clause that was blamed.

What about situations where the subcontractor who submitted the bid and was the apparent low was dismissed from the process because they were not properly licensed to do the work? So somebody cheated and now when we use a legitimate contractor it cost more. So are we going to cite that as a fault of the subcontractor listing requirement?

The legislative intent of the subcontractor listing requirement is purely to protect the subcontractors who are not in an economically equal bargaining position with general contractors who provide them with work. The legislative intent was to stop bid chiseling and bid shopping which it has done quite successfully. We see a lowering of the threshold as merely an opportunity to provide general contractors with additional time in order to shop the bids. We would like to remind this Committee that this is a low bid system which is quite different than negotiated work. The subcontractors are already providing the general contractor with their very lowest price that they feel they could do the job for. Additionally, we think you have to look beyond the legislative intent and that is when there is bid shopping and bid chiseling, to whose favor does it go? It does not reduce the cost of the job to the taxpayer, it only increases the left over money to the general contractor to put in his pocket.

We would also like to note to this Committee that there are a wide variety of contractors who refuse to bid federal work because there is no such similar requirement on federal procurement contracts. Because they have experienced constant bid shopping and chiseling by general contractors they refuse to participate in that process. We would not like to see the same thing happen to state and county contracts and experience any lessening of the competition.

Lastly, although this bill purports to reduce project delays, another recourse recently enacted by the legislature, requires the posting of a bond along with the protest and this has cut protests from being filed by almost 50% (from 36 to 15 in 2013 and to only 14 in 2014). That seems to be a better way to attack the problem.

Thank you.



ELECTRICAL CONTRACTOR'S ASSOCIATION OF HAWAII

NECA Hawai'i Chapter
1286 Kalani Street, Suite B-203
Honolulu, Hawai'i 96817
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FX: (808) 841-8096
Email: ecah@ecahi.com



March 15, 2017

To: Senate Committee on Government Operations
Honorable Chairman Donna Mercado Kim & Vice Chairman Russell Ruderman

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

Subject: HB 1229, HD1 Relating to Procurement

Notice of Hearing

Date: Thursday, March 16, 2017
Time: 2:50 PM
Place: Conference Room 224
State Capitol
415 South Beretania Street

Dear Chair Kim 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 **strongly opposes** the intent and purpose of HB 1229, HD1 that requires public procurement construction bids to list subcontractors and joint contractors only for contracts in excess of an arbitrary (currently unlisted) value. First, this bill cites that this legislature finds that many recent bid protests have been based on subcontractor listing and licensing issues, this is a total misstatement of fact. It has already been determined by the State Procurement Taskforce that in fact, the sublisting requirement caused a very small amount of protests delays and cost overruns. The responsibility of listing their subcontractors or determining that a subcontractor possesses the appropriate license falls under the due diligence of the bidding contractor. Much of this work can be completed before the eleventh hour of the bid process.

This bill also targets subcontractors whose bids are normally less than any threshold levels previously cited. Many subcontractors are small businesses and can only bid on projects within their capabilities. When their bids fall under the arbitrary threshold amount, they will be without the protection of the sublisting requirement. This would ultimately reduce the number of bidders for public work jobs. Electrical contractors have refused to bid on Federal projects because they do not require the subcontractors listing as they have been the victims of bid shopping in the past. All bids should require the subcontractor listing regardless of the bid amount to ensure that bid shopping or bid peddling do not occur.

This bill does not provide for an equitable resolution of the sublisting requirement between the proponents and opponents of this bill and should not move past this committee. Based on the above, ECAH **strongly opposes** the passage of HB 1229, HD1 and encourage this committee to kill this bill.

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



Alan Shintani Inc.
GENERAL CONTRACTOR BC 13068

March 16, 2017

TO: HONORABLE DONNA MERCADO KIM, CHAIR, HONORABLE RUSSELL RUDERMAN, VICE CHAIR, COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **SUPPORT OF H.B. 1229, HD1 RELATING TO PROCUREMENT.** Requires public procurement construction bids to list subcontractors and joint contractors only for contracts with an unspecified total value; provided that bids lacking this list may be accepted if in the State's best interest. (HB1229 HD1)

HEARING

DATE: March 16, 2017
TIME: 2:50 p.m.
PLACE: Capitol Room 224

Dear Chair Mercado Kim, Vice Chair Ruderman and Members of the Committee,

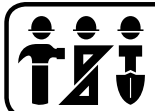
Alan Shintani, Inc. **supports** the passage of H.B. 1229, HD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by limiting which projects the subcontractor listing requirement applies to depending on a dollar threshold. Under this proposed change, the subcontractor list would still be required but only on projects either over or under a certain dollar threshold.

Under current law HRS, Section 103D-302(b) requires the bidding contractor to list subcontractors and joint contractors and their scope of work to be employed on all public works projects unless the prime contractor has the required specialty license or will do the work themselves. The listing of subcontractors has become a way in which bidders attack the responsiveness of a proposal, resulting in awards to non-low bidders, increased cost to the state and delay of projects due to a technicality in the submitted subcontractor list. As a result, not only does the lowest bidder and their listed subcontractors get disqualified from performing, but the state could end up paying millions of dollars more for the project. Therefore, the lowest bidder and all of its listed subcontractors lose out on the opportunity to do work for the state or county. This bill proposes to limit which projects the subcontractor listing applies to based on the cost of the project, which will in turn limit these types of challenges. This is not a new concept as the State of Washington only requires a subcontractor list to be submitted for projects over \$1 million but only requires 3 trades to be listed electrical, plumbing and Heating, Ventilation, and AC subcontractors.

Given the large number of "C" (currently over 100 issued and growing), it becomes increasingly difficult for the general contractor to ensure that their submitted listing includes all necessary information. This will not change the law that requires that all contractors on the project must be properly licensed, nor would it change the responsibility of the general contractor to ensure the project is completed.

Alan Shintani, Inc. **supports** H.B. 1229, HD1 and recommends its passage.

Alan Shintani
President



RALPH S. INOUYE CO LTD
GENERAL CONTRACTOR

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March 15, 2017

TO: HONORABLE DONNA MERCADO KIM, CHAIR, HONORABLE RUSSELL RUDERMAN, VICE CHAIR, COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **SUPPORT OF H.B. 1229, HD1 RELATING TO PROCUREMENT.** Requires public procurement construction bids to list subcontractors and joint contractors only for contracts with an unspecified total value; provided that bids lacking this list may be accepted if in the State's best interest. (HB1229 HD1)

HEARING

DATE: March 16, 2017
TIME: 2:50 p.m.
PLACE: Capitol Room 224

Dear Chair Mercado Kim, Vice Chair Ruderman and Members of the Committee,

Ralph S Inouye Co, Ltd (RSI), a Hawaii general contractor and member of the General Contractors Association of Hawaii, **supports** the passage of H.B. 1229, HD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by limiting which projects the subcontractor listing requirement applies to depending on a dollar threshold. Under this proposed change, the subcontractor list would still be required but only on projects either over or under a certain dollar threshold.

Under current law HRS, Section 103D-302(b) requires the bidding contractor to list subcontractors and joint contractors and their scope of work to be employed on all public works projects unless the prime contractor has the required specialty license or will do the work themselves. The listing of subcontractors has become a way in which bidders attack the responsiveness of a proposal, resulting in awards to non-low bidders, increased cost to the state and delay of projects due to a technicality in the submitted subcontractor list. As a result not only does the lowest bidder and their listed subcontractors get disqualified from performing, but the state could end up paying millions of dollars more for the project. Therefore the lowest bidder and all of its listed subcontractors lose out on the opportunity to do work for the state or county. This bill proposes to limit which projects the subcontractor listing applies to based on the cost of the project, which will in turn limit these types of challenges.

Given the large number of "C" (currently over 100 issued and growing), it becomes increasingly difficult for the general contractor to ensure that their submitted listing includes all necessary information. This will not change the law that requires that all contractors on the project must be properly licensed, nor would it change the responsibility of the general contractor to ensure the project is completed.

RSI **supports** H.B. 1229, HD1 and recommends its passage.



March 16, 2017

TO: Senate Committee on Government Operations

FROM: Blake Parsons, Executive Director

SUBJECT: Opposition to *H.B. 1229, HD1 - Relating to Procurement*

Chair Kim and Members of the Committee:

My name is Blake Parsons. I am the Executive Director of the Sheet Metal Contractors Association (SMCA), a trade association that represents unionized sheet metal and air conditioning contractors in Hawaii.

SMCA opposes H.B. 1229, HD1.

The bill disadvantages small and up-and-coming contractors who are protected by the subcontractor listing requirement. Any attempt to exempt projects from the sub-listing requirement creates a greater ability for general contractors to prey on small-business subcontractors by effectively sanctioning bid shopping.

If enacted, this bill would even further reduce the amount of subcontractors interested in bidding on State projects. This means less competition and higher costs to taxpayers.

We feel the legislature has a duty to uphold the intent of the procurement code, protect small businesses, and ensure legislation is intended to benefit the taxpayers. H.B. 1229, HD1 does none of this.

Therefore, we strongly oppose H.B. 1229, HD1.

Mahalo,

A handwritten signature in black ink, appearing to be "Blake Parsons". The signature is fluid and cursive, with a long horizontal stroke at the end.

Blake Parsons
Executive Director



P.O. Box 4088
Honolulu, HI 96812-4088
Phone: (808) 735-3211

Via E-mail: GVOTestimony@capitol.hawaii.gov
Facsimile: 1-808-587-7205

March 16, 2017

TO: HONORABLE DONNA MERCADO KIM, CHAIR, HONORABLE RUSSELL RUDERMAN, VICE CHAIR, COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **SUPPORT OF H.B. 1229, HD1 RELATING TO PROCUREMENT.** Requires public procurement construction bids to list subcontractors and joint contractors only for contracts with an unspecified total value; provided that bids lacking this list may be accepted if in the State's best interest. (HB1229 HD1)

HEARING

DATE: March 16, 2017
TIME: 2:50 p.m.
PLACE: Capitol Room 224

Dear Chair Mercado Kim, Vice Chair Ruderman and Members of the Committee,

Hawaiian Dredging Construction Company, Inc. supports the passage of H.B. 1229, HD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by limiting which projects the subcontractor listing requirement applies to depending on a dollar threshold. Under this proposed change, the subcontractor list would still be required but only on projects either over or under a certain dollar threshold.

Under current law HRS, Section 103D-302(b) requires the bidding contractor to list subcontractors and joint contractors and their scope of work to be employed on all public works projects unless the prime contractor has the required specialty license or will do the work themselves. The listing of subcontractors has become a way in which bidders attack the responsiveness of a proposal, resulting in awards to non-low bidders, increased cost to the state and delay of projects due to a technicality in the submitted subcontractor list. As a result not only does the lowest bidder and their listed subcontractors get disqualified from performing, but the state could end up paying millions of dollars more for the project. Therefore the lowest bidder and all of its listed subcontractors lose out on the opportunity to do work for the state or county. This bill proposes to limit which projects the subcontractor listing applies to based on the cost of the project, which will in turn limit these types of challenges. This is not a new concept as the State of Washington only requires a subcontractor list to be submitted for projects over \$1 million but only requires 3 trades to be listed electrical, plumbing and Heating, Ventilation and AC subcontractors.

Given the large number of "C" (currently over 100 issued and growing), it becomes increasingly difficult for the general contractor to ensure that their submitted listing includes all necessary information. This will not change the law that requires that all contractors on

Support of HB 1229, HD1 Relating to Procurement

March 15, 2017

Page 2

the project must be properly licensed, nor would it change the responsibility of the general contractor to ensure the project is completed.

Hawaiian Dredging Construction Company, Inc. supports H.B. 1229, HD1 and recommends its passage.

With best regards,



Joseph P. Majkut
President
Hawaiian Dredging Construction Company, Inc.

