

DAVID Y. IGE  
GOVERNOR



SARAH ALLEN  
ADMINISTRATOR  
MARA SMITH  
ASSISTANT ADMINISTRATOR

**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 1229  
PROCUREMENT; SUBCONTRACTOR LISTING  
RELATING TO PROCUREMENT

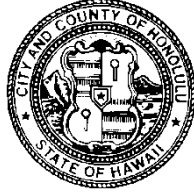
Chair Johanson, Vice-Chair Holt, and members of the committee, thank you for the opportunity to submit testimony on House Bill 1229.

The SPO offers the following comments:

A similar bill on the Senate side: SB1069, offers a threshold of \$1 million and this bill recommends \$5 million. The SPO does not have a position either way, but rather, asks for corroborating business analytics to substantiate these data points. Also, should this be implemented, stronger post-award contract management must be enforced for oversight over licensing issues.

Thank you.

KIRK CALDWELL  
MAYOR



NELSON H. KOYANAGI, JR.  
DIRECTOR

GARY T. KUOKAWA  
DEPUTY DIRECTOR

TESTIMONY OF NELSON H. KOYANAGI, JR.  
DIRECTOR OF BUDGET AND FISCAL SERVICES  
CITY AND COUNTY OF HONOLULU  
BEFORE THE HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
February 2, 2017, 9:00 AM, Conference Room 309

TO: The Honorable Aaron Ling Johanson, Chair  
and Members of the Committee on Labor & Public Employment

RE: SUPPORT OF HOUSE BILL 1229, RELATING TO PROCUREMENT

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

Subcontractor listing requirements and licensing issues have caused protests and award delays. Requiring the listing of joint contractors and subcontractors only for construction contracts with a total estimated value of more than \$5,000,000 will decrease the protests and delays experienced by the City.

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

Mahalo for the opportunity to testify on this bill. Should you have any questions or concerns, please feel free to contact the Department of Budget & Fiscal Services' Division of Purchasing at 808-768-5535 or [bfspurchasing@honolulu.gov](mailto:bfspurchasing@honolulu.gov).

# IRONWORKERS STABILIZATION FUND

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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: Strong Opposition for HB 1229 – Relating to Procurement

We are in strong opposition of HB 1229, Relating to Procurement; that requires public procurement bids to list subcontractors and joint contractors only for contracts of \$5,000,000 or more.

The purpose of this bill strongly goes against 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 it is in the best interest of the public that they know all the subcontractors and joint contractors for any jobs. This will also ensure that the public can view if all the parties involved is licensed and has not had any wrong doing in the past. We perceive this bill is trying to hide information from the general public.

Consequently, we believe to modify the procurement law will jeopardize the integrity of the process.

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

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

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

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

February 2, 2017

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

Presented By: Tim Lyons, President

Subject: H.B. 1229 - RELATING TO PROCUREMENT

Chair Johanson and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we do not support 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 do not support this bill for all of the reasons that were list in our testimony on H.B. 1228. The subcontractor listing clause is vital to the furtherance of the subcontractors who participate in bidding State and County projects. The idea in this bill is not new and, in fact, it existed at one time as an exception for the University of Hawaii procurement system. It was a failure. As a matter of fact, after two (2) or three (3) years it was repealed. The reason it was repealed is because what occurred was exactly what we predicted. There was an incredible amount of bid shopping and bid chiseling by general contractors against subcontractors on jobs that were filed. As we predicted, so much so that some contractors declined to participate in UH jobs. It was on more than one occasion that UH complained that they were not getting sufficient numbers of bidders for certain jobs.

The other negative consequence of this bill is that it excepts the subcontractor listing clause when the project is \$5,000,000 or more. This clause particularly discriminates against those subcontractors who perform work on a project that tend to be of lower volume. A good example of that might be C-7 or C-21 flooring contractor or, a C51 tile contractor, a C14 sign contractor or again, depending on the design a C5 siding application contractor. With this exception some trades could be constantly shopped or bid chiseled because they come under the threshold. We note that a large portion of the jobs by the State and County are often renovations or remodeling jobs, not new construction so an inordinate share of the jobs would be exempt from subcontractor listing. We submit to you that this is incredibly unfair to those subcontractors and as such we cannot recommend this bill.

Thank you.



1088 BISHOP STREET #408  
HONOLULU, HI 96813  
PH: (808) 597-1216

GREGG S. SERIKAKU  
EXECUTIVE DIRECTOR

Via Email

January 31, 2017

Representative Aaron Ling Johanson, Chair  
Representative Daniel Holt, Vice-Chair  
House of Representatives Committee on Labor and Public Employment  
The Twenty-Ninth Legislature, Regular Session of 2017

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

**SUBJECT: HB1229 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 HB1229.

This bill increases the threshold for contracts that require the subcontractor listing and scope of work to projects greater than \$1,000,000, and where the subcontractor's portion of the work is greater than 5%. We believe these changes will degrade the integrity of the procurement process, increase bid challenges, and incite bid shopping on projects that fall below these thresholds.

In 2015 the procurement task force culminated 2 years of data gathering, meetings and discussion with stakeholders, with a report to the legislature that looked at the overall efficiency of procurement on government projects. The data from this report indicates that only a very small percentage of the total construction jobs procured by the reporting agencies were protested, and that the increase in the contract price of bids going to the non low bidder due to protests was less than 1%. These results clearly show that the number and costs of protests are minimal, and in most cases prime bidders were able to correctly follow the procurement rules and subcontractor listing requirements currently in place.

In summary, there is no substantiated need to dilute the sublisting requirement by increasing the listing threshold. The proposed thresholds represent sizable contracts for many contractors especially for the small and medium sized companies, and these companies, which form the backbone of the local construction industry, should not be discounted and exposed to bid shopping.

We therefore respectfully urge the committee to hold this bill.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Gregg S. Serikaku", written in a cursive style.

Gregg S. Serikaku  
Executive Director



ELECTRICAL CONTRACTOR'S ASSOCIATION OF HAWAII

NECA Hawai'i Chapter

1286 Kalani Street, Suite B-203

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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 1229 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 **strongly opposes** the intent and purpose of HB 1229 that requires public procurement construction bids to list subcontractors and joint contractors only for contracts with a total value of more than \$5,000,000. The \$5,000,000 is such an arbitrary amount and it would not be in the best interest of the general public. The majority of electrical contractors and other subcontractors are small businesses and generally bid on projects where the total value is under \$5,000,000. Eliminating the sublisting would encourage the unethical practice of bid shopping and peddling much to the detriment of our contractors and only enriches the bidding contractor and not the State or tax payers. All bids should require the sublisting to ensure that bid shopping or bid peddling do not occur.

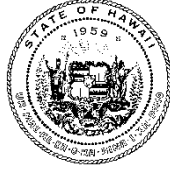
Based on the above, ECAH **strongly opposes** the passage of HB 1229 and encourage this committee to kill this bill.

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

**LATE**

**LATE**

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  
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
ON  
THURSDAY, FEBRUARY 2, 2017  
9:00 A.M.  
CONFERENCE ROOM 309

H.B. 1229

RELATING TO PROCUREMENT.

Chair Johanson, Vice Chair Holt, and members of the Committee, thank you for the opportunity to submit testimony on H.B. 1229.

The Department of Accounting and General Services (DAGS) opposes this bill: Establishing a threshold of the total estimated contract value for the requirement to list subcontractors of \$5,000,000 is unlikely to significantly reduce the number of bid protests for these higher dollar construction projects. Protests are far more likely for such jobs due to the potential higher payoff for a successful protest.

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



**LATE**

**LATE LATE**

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



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

Uploaded via Capitol Website

February 2, 2017

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

SUBJECT: **SUPPORT OF H.B. 1229, RELATING TO PROCUREMENT.** Requires public procurement construction bids to list subcontractors and joint contractors only for contracts with a total value of more than \$5,000,000; provided that bids lacking this list may be accepted if in the State's best interest.

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.

GCA is in **support** of H.B. 1229, Relating to Procurement, which requires that for construction contracts with a total value of more than \$5,000,000 a list of subcontractors that a bidder is required to use would be provided. Current law under 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. This bill proposes to limit which projects the subcontractor listing applies to. During the interim, the GCA conducted a Mock Bid Exercise with members of the legislature and agencies who were able to experience first-hand the types of situations that may arise moments before bid submission, including, but not limited to, receiving no bid for a certain scope of work, low bidder subcontractor's license may not be valid, last minute amendment to a sub-quote, exclusions by subcontractors, or late subcontractor bid submissions.

**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 contested bid submittals. Additionally, the mandated subcontractor listing requirement is not consistent with the American Bar Association Model Procurement Code (ABA Model Procurement Code), which Hawaii's Procurement Code is modeled after. Furthermore the federal government does not require subcontractor listing on any of their projects thus protests on this issue do not exist. While we understand the concern with**

regard to bid shopping and bid peddling, we have grave concerns about whether the original intent of the subcontractor listing law is still applicable in its entirety.

### **Background of the Subcontractor Listing Requirement**

In the last decade, the subcontractor listing requirement has been used beyond its legislative intent by many non-low bidders to identify errors of the bidders who either fail to list a 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 contract could trigger an inquiry which could lead to a formal bid protest whereby a higher bidder could replace the apparent lowest bidder from being awarded the contract. 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.

Some may argue that further training of procurement officers or review of contractor licensing laws could fix the subcontractor listing problems; however, GCA disagrees. Due to the controversial 2002 decision of the *Okada Trucking* case by the Hawaii Supreme Court and its interpretation of the general contractor's scope of work, the subcontractor listing requirement will continue to be problematic, unless some amendment to procurement requirement is made.

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

The subcontractor listing law has resulted in increased cost for taxpayers, delay in delivery of much needed projects, and the potential of lapsing funds for important projects. We appreciate this Committee's consideration of requiring that only projects over \$5,000,000 require that a subcontractor list be submitted. Thank you for this opportunity to **support** this bill and we respectfully request the Committee to move this measure forward.

**LATE**

**LATE**

**LATE**

HEARING BEFORE THE HOUSE COMMITTEE ON LABOR AND EMPLOYMENT

House Bill 1229  
Relating To Procurement

Chair Johanson and Members of the Committee:

Thank you for this opportunity to submit testimony on behalf of the Painting Industry of Hawaii Labor Management Cooperation Trust Fund, Hawaii Tapers Market Recovery Trust Fund, Hawaii Glaziers, Architectural Metal Glassworkers Local Union 1889 AFL-CIO Stabilization Trust Fund, and Carpet, Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund in **strong opposition** to House Bill 1229, which seeks to limit State law requiring the listing of subcontractors in public construction projects to only those projects with a total value of \$5 million or more.

State law requiring the listing of subcontractors is the primary protection for subcontractors from predatory bid shopping or bid peddling practices. These unethical practices inure to the benefit of the general contractor only, not to the landowner or procurement agency. Any weakening of the law no matter how small or great undermines public confidence in the procurement system and promotes substandard work and/or delays.

We also strongly disagree with the findings section of this Bill which implies that subcontractor listing is a significant problem causing delays and increased cost for public construction projects. The State Procurement Task Force convened pursuant to Senate Concurrent Resolution 92, S.D. 2 (2013) studied data relating to bid protests filed with respect to construction contracts over a multi-year period and concluded that bid protests related to subcontractor listing issues are simply not a statistically significant problem. The Task Force decided not to recommend any changes to the State's procurement law with respect to subcontractor listing.

Finally, any suggestion that subcontractor listing laws should be weakened because of time constraints faced by general contractors in the bid submission process are entirely merit less. All parties are aware of the deadlines involved, and a general contractor has the freedom and power to dictate to subcontractors when their bids must be submitted to the general contractor to be considered for work on the project. The general contractor is free to exclude from consideration any subcontractor that does not timely submit such a bid.

For all of these reasons, we respectfully ask that you defer this measure indefinitely. Thank you again for this opportunity to share our strong opposition to this measure.