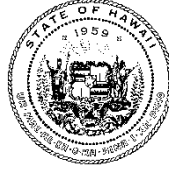


DAVID Y. IGE
GOVERNOR



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

WRITTEN COMMENTS OF
RODERICK K. BECKER, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEES ON
JUDICIARY AND LABOR
AND
WAYS AND MEANS
ON
THURSDAY, MARCH 30, 2017
9:50 A.M.
CONFERENCE ROOM 211

H.B. 573, H.D. 1, S.D. 1

RELATING TO PROCUREMENT.

Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and members of the Committees, thank you for the opportunity to submit written comments on H.B. 573, H.D. 1, S.D. 1.

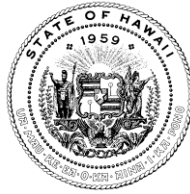
The Department of Accounting and General Services (DAGS) appreciates the intent of the measure, but offers the follow comments for the Committees' consideration.

1. DAGS has concerns with allowing the substitution of subcontractors prior to the award. Most departments that do construction contracting already have provisions within the General Terms and Conditions of their contracts that specify the circumstances under which they will consider allowing the substitution of subcontractors by the prime contractor; therefore, inserting such provisions into

statute may be unnecessary. In the normal course, DAGS does not consider the substitution of subcontractors until after award, which provides the opportunity to approve or deny the substitution. Under the proposed measure, it is unclear whether the State is permitted to consider the reasons for such substitutions and determine whether to allow or disallow the substitution. DAGS believes that the state entity should always have the option to allow or disallow the substitution, and the burden of justifying the substitution should remain with the prime contractor.

2. DAGS has concerns with the reasons for allowing the substitution of subcontractors in the proposed measure since it goes beyond the correction of errors and mistakes in the subcontractor listing as currently provided under §3-122-31, Hawaii Administrative Rules. The proposed substitutions may be considered unfair to bidders, and may allow bid shopping to occur in direct contradiction to the intent of the legislation.
3. DAGS supports the measure's proposed provision that would disallow subcontractors from recovering damages from the State for violations relating to subcontractor listings.

Thank you for the opportunity to submit written comments on this matter.



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
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CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

**PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE**

**TO THE SENATE COMMITTEE
ON
JUDICIARY AND LABOR**

AND

**TO THE SENATE COMMITTEE
ON
WAYS AND MEANS**

**TWENTY-NINTH STATE LEGISLATURE
REGULAR SESSION, 2017**

**THURSDAY, MARCH 30, 2017
9:50 A.M.**

**WRITTEN TESTIMONY ONLY
ON
HOUSE BILL NO. 573 H.D.1 S.D.1
RELATING TO PROCUREMENT**

**TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
TO THE HONORABLE JILL N. TOKUDA, CHAIR,
AND TO THE HONORABLE KARL RHOADS, VICE CHAIR,
AND TO THE HONORABLE DONOVAN M. DELA CRUZ, VICE CHAIR,
AND MEMBERS OF THE COMMITTEES:**

The Department of Commerce and Consumer Affairs ("Department")
appreciates the opportunity to submit written testimony on House Bill No. 573
H.D.1 S.D.1, Relating to Procurement. My name is Daria Loy-Goto and I am the

Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers comments on this bill.

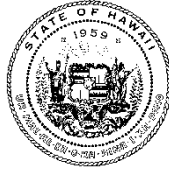
House Bill No. 573 H.D.1 S.D.1 allows a bidder two hours after bid closing to clarify and correct subcontractor information, provides that construction bids shall be opened no sooner than two hours after the closing of the invitation for bids, and prohibits bid shopping and bid peddling. The bill also permits the substitution of an originally listed subcontractor who has a valid and appropriate license from the time of bid through the time of award in three situations: 1) refusal of the originally listed subcontractor to sign a contract with the prime contractor; 2) bankruptcy or insolvency of the originally listed subcontractor; or 3) inability of the originally listed subcontractor to perform the contractual requirements consistent with the terms and written understandings of the parties at the time of bid.

In prior testimony on this bill, RICO expressed its concern that the bill allowed unlicensed contractors to engage in licensed activity contrary to Chapter 444, Hawaii Revised Statutes, and the policy of the Contractors License Board ("Board"). Senate Bill No. 573 H.D.1 S.D.1 now contains language that limits substitution, under specific circumstances, only to listed subcontractors who initially qualified to bid. RICO believes this language addresses its prior concerns by clarifying that an originally listed subcontractor must possess a valid and appropriate license at the time of bid and through the time of award and limits substitution to non-licensing related reasons.

RICO notes that the Committees heard the Senate companion measure, Senate Bill No. 1070, and passed out a Senate Draft 2 that is similar to this bill, except for the clarifying language relating to substitution. The substitution language also is not contained in the current version of that bill, Senate Bill No. 1070 S.D.2 H.D.1. For this reason, RICO prefers this bill when compared to Senate Bill No. 1070 S.D.2. H.D.1

Thank you for the opportunity to submit written testimony on House Bill No. 573 H.D.1 S.D.1.

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
email: state.procurement.office@hawaii.gov
<http://spo.hawaii.gov>
Twitter: [@hawaiispo](https://twitter.com/hawaiispo)

TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEES
ON
JUDICIARY AND LABOR
AND
WAYS AND MEANS
March 30, 2017, 9:50 AM

HOUSE BILL 573 HD 1 SD 1
RELATING TO PROCUREMENT

Chairs Keith-Agaran and Tokuda, Vice-Chairs Rhoads and DelaCruz, and members of the committee, thank you for the opportunity to submit testimony on House Bill 573 HD1 SD1. The SPO **opposes** this bill.

- A. Section 2. Page 4, Lines 10-13, (b)(2) states: "Allow the bidder two hours after the closing...to provide clarity and correction of the subcontract information." and Page 5, Lines 12-14, (d) states: "...bid... shall be opened no sooner than two hours after the closing of the invitation for bids."

The phrase: 'clarity and correction' is too wide and would allow any kind of change that falls outside of the scope of mistakes and errors as already authorized in this statute.

Section 2. Page 4, Lines 10-13, (b)(2) AND Page 6, Lines 12-14:

The Executive Branch, UH, DOE, the Counties as well as other CPO Jurisdictions use a plethora of eProcurement systems for construction invitation for bids that are programmed to publically close the bid at bid date and time due with no allowances for later submission, access or publication. It would cost

thousands of dollars to have each system adjusted for this two-hour caveat, and the counties, who currently use a free system, would be forced to move to a custom eProcurement system which could end up costing hundreds of thousands of tax payer dollars.

- B. Section 2. Page 6, Lines 21-22, and Page 7, Lines 1-19, states the reasons for substituting a subcontractor before and after award.

This process is already taking place after award but includes a very important aspect that has not been considered in this verbiage: it includes communications with the Government who has final approval rights. The government is acting as third party oversight to the decision-making process to ensure the request for substitution is for a valid reason. This Bill verbiage is essentially limiting the current authority of the government.

Allowing the prime contractor to make these changes after submitting their bid but before award, and without government approval, for the reasons listed, open a wide gap where the prime contractor could bring the government a substitution every day until award. Notwithstanding the time burden this is placing on the procurement workforce, it is also removing the responsibility of the prime contractor to submit responsible and licensed subcontractors with its original bid and essentially moving this responsibility to the Procurement Officer.

Consider the reasons proposed: Inability to perform the requirements, refusal to sign a contract, bankruptcy, insolvency. This would allow prime contractors to submit anybody on their proposal and not be concerned with who they choose in the first place.

It is unclear whose responsibility it will be to prove bid shopping or bid peddling did occur. A concern is that this will fall to the contracting government agency and further delay execution of construction projects.

- C. Section 2. Page 7, lines 15 and 16 list the following as one of the reasons a prime may substitute a subcontractor: "...Inability of the listed subcontractor to perform the requirements of the proposed contract or the project..."

Whose responsibility would it fall to prove the subcontractor was unable to perform? This could easily be another source of delaying the project.

Lastly, the ability of an originally listed subcontractor to recover monetary damages from a prime who executed a contract with a government entity and a substituted contractor does not belong in a procurement statute as the State has no privity with subcontractors.

Thank you.



Alan Shintani Inc.
GENERAL CONTRACTOR ABC 13068

March 30, 2017

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE KARL RHOADS,
VICE CHAIR, COMMITTEE ON JUDICIARY AND LABOR

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

SUBJECT: **SUPPORT OF H.B. 573, HD1, SD1, RELATING TO PROCUREMENT.**
Provides a bidder of a public works construction project with two hours after
the closing of bids to clarify and correct certain information regarding
subcontractors. Prohibits bid shopping and bid peddling for the competitive
sealed bidding process. Effective 7/1/2055. (SD1)

Public Decision Making

DATE: March 30, 2017
TIME: 9:50 a.m.
PLACE: Capitol Room 211

Dear Chair Keith-Agaran, Chair Tokuda, Vice Chair Rhoads, Vice Chair Dela Cruz and
Members of the Committee,

Alan Shintani, Inc. supports the passage of H.B. 573, HD1, SD1, Relating to Procurement,
which would amend the current procurement subcontractor listing requirement under Section
103D-302, HRS by allowing bidders two hours after bid closing to clarify and correct the list of
subcontractors or joint contractors working on the project to the agency. Under this proposed
change, the procurement officer would accept the bids in the usual manner, but would not
open the bids until after the subcontractor lists have been submitted.

The proposed change will permit the bidder the opportunity to ensure that all subcontractors
who have submitted bids to the general contractor have met all 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 will reduce the likelihood of errors
and result in reducing the number of bid protests which often delay public works projects and
in some cases, increase the cost of public works project for the state. Further the bill includes
a provision that prohibits bid shopping and bid peddling and allows one who suspects such
activity is occurring to make a claim against such activity.

We believe that this proposed amendment will result in more complete and accurate bid
submittals and reduce the number of potential bid protests.

Alan Shintani, Inc. supports H.B. 573, HD1, SD1 and recommends its passage.

Alan Shintani
President

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

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ALAN TWU
HK CONSTRUCTION CORP.

MAILING:
P.O. BOX 970967
WAIPAHU, HAWAII 96797-0967

PHYSICAL:
94-487 AKOKI STREET
WAIPAHU, HAWAII 96797

Testimony to the Senate Committees on Judiciary & Labor; and Senate Committee on Ways & Means Thursday, March 30, 2017 9:50 am Conference Room 211

RE: H.B. 573 HD1 SD1 – Relating to Procurement

Chairs Keith-Agaran & Tokuda, Vice-Chairs Rhoads & Dela Cruz, and members of the committee:

My name is Gladys Quinto Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii is in support of H.B. 573 HD1 SD1, which would prohibit bid-shopping and bid-peddling in the competitive sealed bidding process. As a matter of fairness in the bidding process, we are in support of legislation that prevents bid-shopping and bid-peddling.

Thank you for the opportunity to share our views on this matter.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcawhawaii.org
Website: www.gcawhawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 30, 2017

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE KARL RHOADS, VICE CHAIR, COMMITTEE ON JUDICIARY AND LABOR

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

SUBJECT: **STRONG SUPPORT OF H.B. 573, HD1, SD1, RELATING TO PROCUREMENT.** Provides a bidder of a public works construction project with two hours after the closing of bids to clarify and correct certain information regarding subcontractors. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Effective 7/1/2055. (SD1)

Public Decision Making

DATE: March 30, 2017
TIME: 9:50 a.m.
PLACE: Capitol Room 211

Dear Chair Keith-Agaran, Chair Tokuda, Vice Chair Rhoads, Vice Chair Dela Cruz 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. 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 **strongly supports** H.B. 573, HD1, SD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by allowing the bidder two hours after the closing of bids to provide clarification or correction to the subcontractor listing submission, thereafter bids would then be opened after the two hour period. Also this measure includes a provision that defines bid-shopping and bid-peddling and prohibits such practice, while also allowing for the substitution of subcontractors for reasons connected to the subcontractor's ability to perform the work, language which is in part borrowed from Washington State's statute. Current Hawaii law under HRS, Section 103D-302(b) requires the bidding contractor to list all subcontractors and joint contractors and their scope of work to be employed on public works projects unless the prime contractor has the required specialty license or will do the work themselves. Legislative history indicates that the purpose for the subcontractor listing is to deter bid-shopping and bid-peddling, however the subcontractor listing requirement has become a tool for bidders to find flaws in another bidder's submission and deem them non-responsive.

While opponents of this bill may argue that allowing a bidder two extra hours to submit their subcontractor list would allow bid shopping or bid peddling to occur, we argue that these types of practices are found to be abhorrent and not tolerated in the industry as a whole. **Furthermore, GCA's national organization, Associated General Contractors of America (AGC), is resolutely opposed to the practice of bid shopping. Consequently, the 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."** *Associated General Contractors Association*. Website accessed on March 12, 2017 at <https://www.agc.org/industry-priorities/procurement/bid-shopping>.

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 faults of winning bidders who either fail to list a subcontractor or inadvertently and erroneously complete the list. 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 the non-lowest bidder could throw out the apparent lowest bidder from being awarded the contract. This has resulted in delays in awarding the contract to address the protest and in the event the low bidder is disqualified, there is additional cost to the agency and taxpayers if the contract is awarded to another bidder. This measure would permit a bidder to make a correction within two hours after the bid was submitted to ensure any errors are mitigated prior to opening of the bids.

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 taxpayers millions.

For these reasons, we respectfully request passage of this measure that would allow a bidder additional time of two hours to ensure that the subcontractor list is accurate and includes all information necessary to preclude any potential challenge to bidder responsiveness.



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

Via E-mail: JDLTestimony@capitol.hawaii.gov
WAMTestimony@capitol.hawaii.gov
Facsimile: 1-808-586-7348

March 28, 2017

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE KARL RHOADS, VICE CHAIR, COMMITTEE ON JUDICIARY AND LABOR

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

SUBJECT: **SUPPORT OF H.B. 573, HD1, SD1, RELATING TO PROCUREMENT.**
Provides a bidder of a public works construction project with two hours after the closing of bids to clarify and correct certain information regarding subcontractors. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Effective 7/1/2055. (SD1)

Public Decision Making
DATE: March 30, 2017
TIME: 9:50 a.m.
PLACE: Capitol Room 211

Dear Chair Keith-Agaran, Chair Tokuda, Vice Chair Rhoads, Vice Chair Dela Cruz and Members of the Committee,

Hawaiian Dredging Construction Company, Inc. supports the passage of H.B. 573, HD1, SD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by allowing bidders two hours after bid closing to clarify and correct the list of subcontractors or joint contractors working on the project to the agency. Under this proposed change, the procurement officer would accept the bids in the usual manner, but would not open the bids until after the subcontractor lists have been submitted.

The proposed change will permit the bidder the opportunity to ensure 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 will reduce the likelihood of errors and result in reducing the number of bid protests which often delay public works projects and in some cases increase the cost of public works project for the state. Further the bill includes a provision that prohibits bid shopping and bid peddling and allows one who suspects such activity is occurring to make a claim against such activity.

Support of HB 573, HD1, SD1 Relating to Procurement

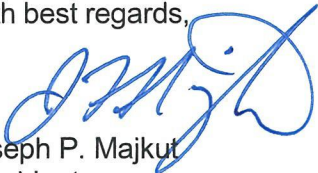
March 28, 2017

Page 2

We believe that this proposed amendment will result in more complete and accurate bid submittals and reduce the number of potential bid protests.

Hawaiian Dredging Construction Company, Inc. supports H.B. 573, HD1, SD1 and recommends its passage.

With best regards,

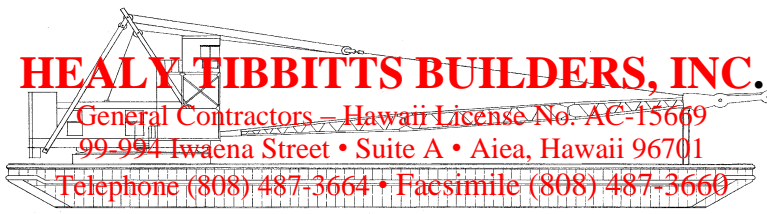


Joseph P. Majkut

President

Hawaiian Dredging Construction Company, Inc.





March 28, 2017

Sent Via E-mail to: JDLTestimony@capitol.hawaii.gov
WAMTestimony@capitol.hawaii.gov

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE KARL RHOADS, VICE CHAIR, COMMITTEE ON JUDICIARY AND LABOR

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

SUBJECT: **SUPPORT OF H.B. 573, HD1, SD1, RELATING TO PROCUREMENT.**
Provides a bidder of a public works construction project with two hours after the closing of bids to clarify and correct certain information regarding subcontractors. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Effective 7/1/2055. (SD1)

Public Decision Making

DATE: March 30, 2017

TIME: 9:50 a.m.

PLACE: Capitol Room 211

Dear Chair Keith-Agaran, Chair Tokuda, Vice Chair Rhoads, Vice Chair Dela Cruz and Members of the Committee:

Healy Tibbitts Builders, Inc. is a general contractor in the State of Hawaii and has been actively engaged in construction work in Hawaii since the early 1960's. In addition to being a general contractor, Healy Tibbitts also performs work as a subcontractor for foundation work.

Healy Tibbitts Builders, Inc. **supports** the passage of H.B. 573, HD1, SD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by allowing bidders two hours after bid closing to clarify and correct the list of subcontractors or joint contractors working on the project to the agency. Under this proposed change, the procurement officer would accept the bids in the usual manner, but would not open the bids until after the subcontractor lists have been submitted.

The proposed change will permit the bidder the opportunity to ensure 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

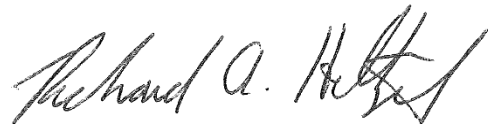
Healy Tibbitts Builders, Inc.

must be submitted to the state agency. This will reduce the likelihood of errors and result in reducing the number of bid protests which often delay public works projects and in some cases increase the cost of public works project for the state. Further the bill includes a provision that prohibits bid shopping and bid peddling and allows one who suspects such activity is occurring to make a claim against such activity.

We believe that this proposed amendment will result in more complete and accurate bid submittals and reduce the number of potential bid protests.

Healy Tibbitts Builders, Inc. **supports** H.B. 573, HD1, SD1 and recommends its passage.

Very truly yours,
Healy Tibbitts Builders, Inc.

A handwritten signature in black ink, appearing to read "Richard A. Heltzel". The signature is written in a cursive, flowing style.

Richard A. Heltzel
President

By way of Email only: JDLTestimony@capitol.hawaii.gov and WAMTestimony@capitol.hawaii.gov

March 30, 2017

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE KARL RHOADS, VICE CHAIR,
COMMITTEE ON JUDICIARY AND LABOR

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

SUBJECT: **SUPPORT OF H.B. 573, HD1, SD1, RELATING TO PROCUREMENT.** Provides a bidder of a public works construction project with two hours after the closing of bids to clarify and correct certain information regarding subcontractors. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Effective 7/1/2055. (SD1)

Public Decision Making

DATE: March 30, 2017

TIME: 9:50 a.m.

PLACE: Capitol Room 211

Dear Chair Keith-Agaran, Chair Tokuda, Vice Chair Rhoads, Vice Chair Dela Cruz and Members of the Committee,

Heartwood Pacific LLC supports the passage of H.B. 573, HD1, SD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by allowing bidders two hours after bid closing to clarify and correct the list of subcontractors or joint contractors working on the project to the agency. Under this proposed change, the procurement officer would accept the bids in the usual manner, but would not open the bids until after the subcontractor lists have been submitted.

The proposed change will permit the bidder the opportunity to ensure 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 will reduce the likelihood of errors and result in reducing the number of bid protests which often delay public works projects and in some cases increase the cost of public works project for the state. Further the bill includes a provision that prohibits bid shopping and bid peddling and allows one who suspects such activity is occurring to make a claim against such activity.

We believe that this proposed amendment will result in more complete and accurate bid submittals and reduce the number of potential bid protests.

Heartwood Pacific LLC supports H.B. 573, HD1, SD1 and recommends its passage.



Contractor's License No. ABC1036

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PHONE (808) 935-7194 FAX (808) 961-6417

KONA BRANCH: 74-5039B QUEEN KAAHUMANU HWY., P.O. BOX 3169, KAILUA-KONA, HI 96740
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Via E-mail: JDLTestimony@capitol.hawaii.gov

WAMTestimony@capitol.hawaii.gov

Facsimile: 1-808-586-7348

March 30, 2017

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE KARL RHOADS, VICE CHAIR, COMMITTEE ON JUDICIARY AND LABOR

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

SUBJECT: **SUPPORT OF H.B. 573, HD1, SD1, RELATING TO PROCUREMENT.**

Provides a bidder of a public works construction project with two hours after the closing of bids to clarify and correct certain information regarding subcontractors. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Effective 7/1/2055. (SD1)

Public Decision Making

DATE: March 30, 2017

TIME: 9:50 a.m.

PLACE: Capitol Room 211

Dear Chair Keith-Agaran, Chair Tokuda, Vice Chair Rhoads, Vice Chair Dela Cruz and Members of the Committee,


Isemoto Contracting Co., Ltd. supports the passage of H.B. 573, HD1, SD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by allowing bidders two hours after bid closing to clarify and correct the list of subcontractors or joint contractors working on the project to the agency. Under this proposed change, the procurement officer would accept the bids in the usual manner, but would not open the bids until after the subcontractor lists have been submitted.

The proposed change will permit the bidder the opportunity to ensure 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 will reduce the likelihood of errors and result in reducing the number of bid protests which often delay public works projects and in some cases increase the cost of public works project for the state. Further the bill includes a provision that prohibits bid shopping and bid peddling and allows one who suspects such activity is occurring to make a claim against such activity.

We believe that this proposed amendment will result in more complete and accurate bid submittals and reduce the number of potential bid protests.

Isemoto Contracting Co., Ltd. supports H.B. 573, HD1, SD1 and recommends its passage.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie Isemoto". The signature is fluid and cursive, with a large initial "L" and "I".

Leslie Isemoto,
President



JAYAR CONSTRUCTION, INC.

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

March 28, 2017

To: HONORABLE GIL KEITH-AGARAN, CHAIR, HONORABLE KARL RHOADS, VICE CHAIR, MEMBERS OF
THE COMMITTEE ON JUDICIARY AND LABOR

HONORABLE JILL TOKUDA, CHAIR, HONORABLE DONOVAN DELA CRUZ, VICE CHAIR, MEMBERS OF
THE COMMITTEE ON WAYS AND MEANS

SUBJECT: **SUPPORT OF H.B. 573, HD1, SD1, RELATING TO PROCUREMENT.** Provides a bidder of a public works construction project with two hours after the closing of bids to clarify and correct certain information regarding subcontractor listings. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Effective 7/1/2055. (SD1)

Hearing Date: March 30, 2017
Hearing Time: 9:50 A.M.
Hearing Place: Capitol Room 211

Dear Chair Keith-Agaran, Chair Tokuda, Vice Chair Rhoads, Vice Chair Dela Cruz and Members of the Committees,

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. 573, HD1, SD1, Relating to Procurement, which would amend the current subcontractor listing requirement by allowing bidders two hours after bid closing to clarify and correct the list of subcontractors or joint contractors working on the project to the agency. Under this proposed change the procurement officer would accept bids in the usual manner, but would not open the bids until after the subcontractor lists have been submitted.

The proposed change will permit the bidder the opportunity to ensure 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 the subcontractors bid prices until shortly before the bid must be submitted to the agency. This will reduce the likelihood of errors and result in reducing the number of bid protests which often delay public works projects and often increase the cost of projects for the state. The bill includes a provision that prohibits bid shopping and bid peddling and allows one who suspects such activity is occurring to make a claim against such activity.

We strongly believe that this proposed amendment will result in more complete and accurate bid submittals and reduce the number of potential bid protests.

Jayar **supports** H.B. 573, HD1, SD1 and recommends its passage.

Sincerely,


Stephen Yoshida
CFO and Human Resource Manager



Via E-mail: JDLTestimony@capitol.hawaii.gov
WAMTestimony@capitol.hawaii.gov
Facsimile: 1-808-586-7348

March 30, 2017

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE KARL RHOADS, VICE CHAIR, COMMITTEE ON JUDICIARY AND LABOR

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

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Public Decision Making
DATE: March 30, 2017
TIME: 9:50 a.m.
PLACE: Capitol Room 211

Dear Chair Keith-Agaran, Chair Tokuda, Vice Chair Rhoads, Vice Chair Dela Cruz and Members of the Committee,

LYZ, Inc. **supports** the passage of H.B. 573, HD1, SD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by allowing bidders two hours after bid closing to clarify and correct the list of subcontractors or joint contractors working on the project to the agency. Under this proposed change, the procurement officer would accept the bids in the usual manner, but would not open the bids until after the subcontractor lists have been submitted.

The proposed change will permit the bidder the opportunity to ensure 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 will reduce the likelihood of errors and result in reducing the number of bid protests which often delay public works projects and in some cases increase the cost of public works project for the state. Further the bill includes a provision that prohibits bid shopping and bid peddling and allows one who suspects such activity is occurring to make a claim against such activity.



general contractor license #ABC 21576

We believe that this proposed amendment will result in more complete and accurate bid submittals and reduce the number of potential bid protests.

LYZ, Inc. supports H.B. 573, HD1, SD1 and recommends its passage.



James N. Kurita
Vice President/COO



SHARING YOUR VISION. BUILDING SUCCESS.

Via E-mail: JDLTestimony@capitol.hawaii.gov
WAMTestimony@capitol.hawaii.gov
Facsimile: 1-808-586-7348

March 28, 2017

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE KARL RHOADS, VICE CHAIR, COMMITTEE ON JUDICIARY AND LABOR

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

SUBJECT: **SUPPORT OF H.B. 573, HD1, SD1, RELATING TO PROCUREMENT.** Provides a bidder of a public works construction project with two hours after the closing of bids to clarify and correct certain information regarding subcontractors. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Effective 7/1/2055. (SD1)

Public Decision Making
DATE: March 30, 2017
TIME: 9:50 a.m.
PLACE: Capitol Room 211

Dear Chair Keith-Agaran, Chair Tokuda, Vice Chair Rhoads, Vice Chair Dela Cruz and Members of the Committee,

Nordic PCL Construction, Inc. supports the passage of H.B. 573, HD1, SD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by allowing bidders two hours after bid closing to clarify and correct the list of subcontractors or joint contractors working on the project to the agency. Under this proposed change, the procurement officer would accept the bids in the usual manner, but would not open the bids until after the subcontractor lists have been submitted.

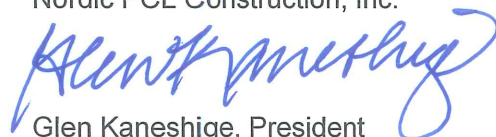
The proposed change will permit the bidder the opportunity to ensure that all subcontractors who have submitted bids to the general contractor have met all of the requirements to perform work on state and county projects, including meeting all licensing, bonding and insurance requirements, as applicable. 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 will reduce the likelihood of errors and result in reducing the number of bid protests which often delay public works projects and in some cases increase the cost of public works project for the state. Further the bill includes a provision that prohibits bid shopping and bid peddling and allows one who suspects such activity is occurring to make a claim against such activity.

We believe that this proposed amendment will result in more complete and accurate bid submittals and reduce the number of potential bid protests.

Nordic PCL Construction, Inc. supports H.B. 573, HD1, SD1 and recommends its passage.

Yours truly,

Nordic PCL Construction, Inc.



Glen Kaneshige, President

NORDIC PCL CONSTRUCTION, INC.

1099 Alakea Street, Suite 1600, Honolulu, HI 96813
Telephone: 808-541-9101 ♦ Fax: 808-541-9108 ♦ www.nordicpcl.com

HEARING BEFORE THE SENATE COMMITTEE ON JUDICIARY & LABOR

AND

SENATE COMMITTEE ON WAYS AND MEANS

House Bill 573, H.D.1, S.D.1
Relating To Procurement

Chairs Keith-Agaran and Tokuda 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 **opposition** to House Bill 573, H.D.1, S.D.1, which seeks to statutorily prohibit bid shopping by creating a legal cause of action for an aggrieved subcontractor and allow for "clarity and correction" of listed subcontractor information up to two hours after the close of bids.

Although at a glance this bill appears to give additional protection to subcontractors against bid shopping by giving them a legal right to sue a general contractor or a replacement subcontractor for bid shopping, this additional protection is illusory at best and disingenuous at worst. State law requiring the listing of subcontractors in public construction projects is the primary protection for subcontractors from predatory bid shopping and/or bid peddling practices. A legal right to sue provides neither timely nor effective relief to a subcontractor who has been bid shopped. No subcontractor wants to incur the time and costs of litigation given an uncertain outcome, the enmity that litigation will surely create between the subcontractor and the general contractor, and possible blacklisting by other general contractors. Because of these problems, a subcontractor is not likely to ever avail itself of this type of protection.

This bill also will allow the general contractor up to two hours after the close of bids to change its listed subcontractors. This change to the procurement code gives the general contractor more than enough time to bid shop subcontractors who have already submitted their best prices to the general contractor where, as here, the conditions under which a listed subcontractor may be changed are vague and unclear. For example, a new subcontractor could be substituted where the listed subcontractor refuses to sign a contract with the general contractor because the general has altered the terms or conditions of the subcontractor's bid. This unethical practice only undermines public confidence in the procurement system and promotes substandard work and/or delays.

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. A copy of the report can be downloaded at: <https://ags.hawaii.gov/wp-content/uploads/2012/09/ProcurementTaskForceReportLS2013.pdf>.

In sum, the current law adequately protects subcontractors from bid shopping without requiring them to go to court for redress and does not cause significant delay or increased costs to the State. Thus, there is no need to amend the law nor a need for an additional lesser form of protection. Moreover, the language of this measure will allow subcontractors to be bid-shopped. For all of these reasons, we respectfully ask that you defer this measure indefinitely. Thank you again for this opportunity to share our opposition to this measure.



RALPH S. INOUE CO LTD
GENERAL CONTRACTOR

500 Alakawa St., #220E
Honolulu, Hawaii 96817

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License No. ABC-457
Founded in 1962

Via E-mail: JDLTestimony@capitol.hawaii.gov
WAMTestimony@capitol.hawaii.gov
Facsimile: 1-808-586-7348

March 30, 2017

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE KARL RHOADS,
VICE CHAIR, COMMITTEE ON JUDICIARY AND LABOR

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

SUBJECT: **SUPPORT OF H.B. 573, HD1, SD1, RELATING TO PROCUREMENT.** Provides a bidder of a public works construction project with two hours after the closing of bids to clarify and correct certain information regarding subcontractors. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Effective 7/1/2055. (SD1)

Public Decision Making

DATE: March 30, 2017
TIME: 9:50 A.M.
PLACE: Capitol Room 211

Dear Chair Keith-Agaran, Chair Tokuda, Vice Chair Rhoads, Vice Chair Dela Cruz 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. 573, HD1, SD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by allowing bidders two hours after bid closing to clarify and correct the list of subcontractors or joint contractors working on the project to the agency. Under this proposed change, the procurement officer would accept the bids in the usual manner, but would not open the bids until after the subcontractor lists have been submitted.

The proposed change will permit the bidder the opportunity to ensure 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 will reduce the likelihood of errors and result in reducing the number of bid protests which often delay public works projects and in some cases increase the cost of public works project for the state. Further the bill includes a provision that prohibits bid shopping and bid peddling and allows one who suspects such activity is occurring to make a claim against such activity.

We believe that this proposed amendment will result in more complete and accurate bid submittals and reduce the number of potential bid protests.

RSI **supports** H.B. 573, HD1, SD1 and recommends its passage.



S & M SAKAMOTO, INC.

GENERAL CONTRACTORS

Via E-mail: JDLTestimony@capitol.hawaii.gov

WAMTestimony@capitol.hawaii.gov

Facsimile: 1-808-586-7348

March 30, 2017

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE KARL RHOADS, VICE CHAIR,
COMMITTEE ON JUDICIARY AND LABOR

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

SUBJECT: **SUPPORT OF H.B. 573, HD1, SD1, RELATING TO PROCUREMENT.** Provides a bidder of a public works construction project with two hours after the closing of bids to clarify and correct certain information regarding subcontractors. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Effective 7/1/2055. (SD1)

Public Decision Making

DATE: March 30, 2017
TIME: 9:50 a.m.
PLACE: Capitol Room 211

Dear Chair Keith-Agaran, Chair Tokuda, Vice Chair Rhoads, Vice Chair Dela Cruz and Members of the Committee,

S & M Sakamoto, Inc. **supports** the passage of H.B. 573, HD1, SD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by allowing bidders two hours after bid closing to clarify and correct the list of subcontractors or joint contractors working on the project to the agency. Under this proposed change, the procurement officer would accept the bids in the usual manner, but would not open the bids until after the subcontractor lists have been submitted.

The proposed change will permit the bidder the opportunity to ensure 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 will reduce the likelihood of errors and result in reducing the number of bid protests which often delay public works projects and in some cases increase the cost of public works project for the state. Further the bill includes a provision that prohibits bid shopping and bid peddling and allows one who suspects such activity is occurring to make a claim against such activity.

We believe that this proposed amendment will result in more complete and accurate bid submittals and reduce the number of potential bid protests.

S & M Sakamoto, Inc. **supports** H.B. 573, HD1, SD1 and recommends its passage.


Very truly yours,

Gerard Sakamoto
Chairman of the Board

SAH - Subcontractors Association of Hawaii
1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-3304
Phone: (808) 537-5619 ♦ Fax: (808) 533-2739

March 28, 2017

TO: Senator Gilbert S.C. Keith-Agaran, Chair
Senate Committee on Judiciary and Labor

FROM: Tim Lyons, CAE 
President

RE: H.B. 573, HD 1, SD 1 – Relating to Procurement (JDL/WAM)

This bill needs your help.

I'm sure you know we are not in favor of the two (2) hours. The two (2) hours after closing of an invitation of bids will only allow for bid-shopping and bid chiseling which is likely to result in more bid protests instead of making the process go smoother. The two (2) hours is referred to in both 103D-302(b)(2) and in Subsection (d).

Apparently the purpose of this is to allow the opportunity for the bidder to make corrections however as stated, it allows for "clarity and correction". We are not sure what that is.

Is clarity and correction changing the name of a subcontractor from ABC, Inc. to ABC, LLC when they are in fact, two separate entities? That is a great opportunity for bid-shopping.

Is clarity and correction changing a contractors license number because a number was inverted e.g., 15762 or 15726? For that we have no problem. It is because of this we suggested language in S.B. 1070, SD 2, HD 1 to further explain that "clarity and correction" was "limited to minor entity name corrections and the validity of a licensed subcontractors license". Senator Kim did not include that change in her proposal.

Senator Kim did include changes in Section 2(h)(3) that further clarifies the inability of the listed subcontractor to perform work and qualifies that by saying it must be "consistent with the terms and understanding of the parties at the time of bid". That is important to keep otherwise a general contractor could propose unrealistic conditions on the low subcontractor after the bid merely for the purpose of getting them to back out of the contract and shop #2.

Lastly, we have testified before that we don't think that the legal actions referred to in (h) will do any good however, we also think they don't do much harm. If you want to keep them in, we are fine with that.

We do not think that these changes are going to help and in fact, we think they are going to hurt. Proponents think they are going to help. At the very least we think a Sunset Clause should be considered of perhaps two (2) years so if this is a disaster, it will be limited.

We would just like to note that we know the game plan for the general contractors here is to allow the two (2) hours to get their "foot in the door" and they will be back in subsequent years saying that the two (2) hours is not a sufficient time period and they need four (4) hours or two (2) days or two (2) weeks. We highly recommend that we do not go down this road.

Thank you for your consideration.

 **TOMCO CORP.**
General Contractors

March 28, 2017

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE KARL RHOADS, VICE CHAIR,
COMMITTEE ON JUDICIARY AND LABOR

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

SUBJECT: **SUPPORT OF H.B. 573, HD1, SD1, RELATING TO PROCUREMENT.** Provides a bidder of a public works construction project with two hours after the closing of bids to clarify and correct certain information regarding subcontractors. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Effective 7/1/2055. (SD1)

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DATE: March 30, 2017
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Dear Chair Keith-Agaran, Chair Tokuda, Vice Chair Rhoads, Vice Chair Dela Cruz and Members of the Committee,

TOMCO CORP. supports the passage of H.B. 573, HD1, SD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by allowing bidders two hours after bid closing to clarify and correct the list of subcontractors or joint contractors working on the project to the agency. Under this proposed change, the procurement officer would accept the bids in the usual manner, but would not open the bids until after the subcontractor lists have been submitted.

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We believe that this proposed amendment will result in more complete and accurate bid submittals and reduce the number of potential bid protests.

TOMCO CORP. supports H.B. 573, HD1, SD1 and recommends its passage.

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

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for HB573 on Mar 30, 2017 09:50AM*
Date: Saturday, March 25, 2017 1:51:51 PM

HB573

Submitted on: 3/25/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Benton	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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