



LATE

February 7, 2017

TO: Senate Committee on Government Operations

FROM: Blake Parsons, Executive Director

SUBJECT: Opposition to *S.B. 1067 - Relating to Procurement*

Chair Mercado Kim and Members of the Committee:

I am Blake Parsons, Executive Director of the Sheet Metal Contractors Association (SMCA), and we **strongly oppose S.B. 1067.**

SMCA is a trade association that represents 36 signatory sheet metal and air conditioning contractors who employ over 500 Hawaii Sheet Metal Workers (Local 293 - A.F.L.-C.I.O) and hundreds of projects managers, administrative staff and other construction related personnel.

Section 1 outlines several false conclusions that were debunked by the findings of a 2013 legislature-sanctioned Procurement Task Force, which consisted of general contractors, subcontractors, labor, and state and city department representatives. The final report, compiled with data from four government agencies of all construction projects in 2013 and 2014, noted that the total cost increases due to subcontractor listing protest issues were only 0.06% and 0.34% for the two years analyzed.

Most importantly, the report stated:

However, after considerable discussion and analysis of the data collected it was noted that the negative impact of the protest process was not as substantial as first thought and is not likely to outweigh its merits. (p.8)

The bill's attempt to allow the general contractor two working days after the closing of the invitation to list subcontractors would completely gut the intent of Hawaii's procurement code and competitive sealed bidding process.

The Hawaii Public Procurement Code Desk Reference, published by the Office Administrative Hearings, noted:



To permit a substantial change in a proposal after bids have been opened and made public, would be contrary to public policy, and would tend to open the door to fraudulent and corrupt practices. Wheelabrator Clean Water Systems, Inc. vs. City & County of Honolulu, PCH 94-1 (November 4, 1994).

....

Purpose of listing requirement; anti-bid shopping; *One of the primary purposes of the listing requirement is to prevent bid shopping and bid peddling. The listing requirement was based in part on the recognition that a low bidder who is allowed to replace a subcontractor after bid opening would generally have greater leverage in its bargaining with other potential subcontractors. By forcing the contractor to commit, when it submits its bid, to utilize a specified subcontractor, the Code seeks to guard against bid shopping and bid peddling. Hawaiian Dredging Construction Company v. City & County of Honolulu, PCH 99-6 (August 9, 1999); Okada Trucking Co., Ltd. v. Board of Water Supply, et. al, 97 Hawaii 54 4 (A pp. 2001); C C Engineering & Construction, Inc. v. Dept. of Budget and Fiscal Services, City and County of Honolulu, PCH-2005-6 (November 1, 2005); Parsons RCI, Inc. v. DOT, et al., PCH-2007-3 (July 13, 2007; Abhe & Svoboda, Inc. v. Dep't of Accounting and General Services, PCX-2009-5 (Dec. 3, 2009)).*

By allowing a general contractor two days after closing to list subcontractors, the State would effectively sanction bid shopping and bid chiseling.

This major change to the State's procurement code would not benefit taxpayers, and would only benefit general contractors. Furthermore, **it would disadvantage small-business subcontractors** whose only protection when bidding on State projects is the subcontractor listing and competitive sealed bidding requirement.

Many of our member contractors DO NOT bid on federal projects, because they do not have the same protections. This ultimately creates less competition in the federal procurement process.

The aforementioned Procurement Task Force outlined several other options to improve the construction procurement process. SMCA and our members would be happy to explore these and other options.

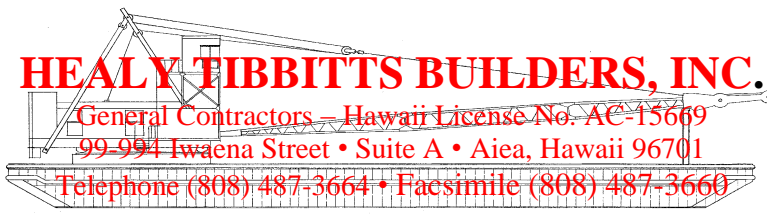


However, we strongly oppose S.B. 1067, which would provide no benefit to taxpayers and would harm small businesses across the state.

Mahalo,

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

Blake Parsons
Executive Director



LATE

February 2, 2017

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

TO: HONORABLE DONNA MERCADO KIM, CHAIR, HONORABLE RUSSELL RUDERMAN, VICE CHAIR AND MEMBERS OF THE COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **SUPPORT OF S.B. 1067, RELATING TO PROCUREMENT.** Provides a bidder of a public works construction project with two working days after the closing of bids to provide the name of each joint contractor or subcontractor and the nature and scope of the work to be performed by each joint contractor or subcontractor.

HEARING

DATE: February 1, 2017

TIME: 2:45 p.m.

PLACE: CR 414

Dear Chair Mercado Kim, Vice Chair Ruderman 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 S.B. 1067, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by allowing bidders two days to submit the list of subcontractors or joint contractors working on the project to the agency. Under this proposed change, the procurement officer would close the bidding in the usual manner, but would not open the bids until after the subcontractor lists have been submitted.

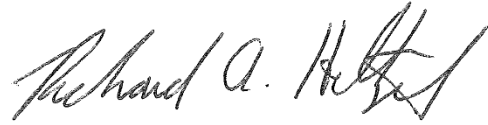
The proposed change will permit the bidder to insure that all subcontractors who have submitted bids to the general contractor have met all of the requirements to perform work on state and county projects, including meeting all licensing, bonding and insurance requirements, as applicable. The additional time is necessary because in most cases the general contractor does not receive bid prices from the various subcontractors until shortly before the bid must be submitted to the state agency. This 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.

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.

Healy Tibbitts Builders, Inc. supports S.B. 1067 and recommends its passage.

Very truly yours,
Healy Tibbitts Builders, Inc.

A handwritten signature in black ink, reading "Richard A. Heltzel". The signature is written in a cursive style with a large, stylized initial "R".

Richard A. Heltzel
President