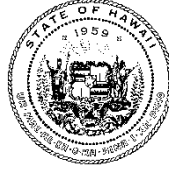


DAVID Y. IGE
GOVERNOR



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
WAYS AND MEANS
ON
TUESDAY, FEBRUARY 28, 2017
9:50 A.M.
CONFERENCE ROOM 211

S.B. 1070, 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 S.B. 1070, S.D. 1.

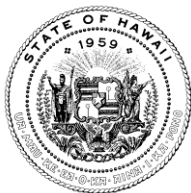
The Department of Accounting and General Services (DAGS) appreciates the intent of the measure, but offers the follow comments for the Committees' consideration.

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. As a matter of 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
cca.hawaii.gov

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

TUESDAY, FEBRUARY 28, 2017
9:50 A.M.

WRITTEN TESTIMONY ONLY
ON
SENATE BILL NO. 1070 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 Senate Bill No. 1070
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.

Senate Bill No. 1070 S.D.1 allows a bidder two hours after closing of the invitation for bids to clarify and correct subcontractor information and provides that construction bids shall be opened no sooner than two hours after the closing of the invitation for bids. The bill also removes the burden placed on prime contractors and substituted subcontractors to prove bid shopping or bid peddling did not occur and limits the reasons for a substitution of a subcontractor to the following situations: (1) refusal of a listed subcontractor to sign a contract with the prime contractor; (2) bankruptcy or insolvency of a listed subcontractor; or (3) inability of the listed subcontractor to perform the requirements of the proposed contract.

Senate Bill No. 1070 S.D.1 contradicts the Contractors License Board's ("Board") longstanding interpretation and policy that a person must be licensed as a contractor at the time of a bid submission and that the license must be current and appropriate for the type of work the contractor is to perform. As the enforcement arm for the Board and in deference to the Board's policy, RICO expresses serious concerns that authorizing subcontractors to submit bids without a current, active, and appropriate license undermines the Board's authority and allows unlicensed contractors to engage in licensed contracting activity.

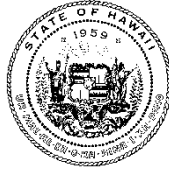
RICO currently investigates and prosecutes general and subcontractors who submit bid proposals without an appropriate or current license and believes Senate Bill No. 1070 S.D.1 undermines those enforcement efforts by allowing

Written Testimony on Senate Bill No. 1070 S.D.1
February 28, 2017
Page 3

subcontractors to participate in the bid process without either a necessary license or the ability to perform the contract.

Thank you for the opportunity to submit written testimony on Senate Bill No. 1070 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
February 28, 2017, 9:50 AM

SENATE BILL 1070 SD1
RELATING TO PROCUREMENT

Chairs Keith-Agaran and Tokuda, Vice-Chairs Rhoads and Dela Cruz, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 1070 SD1.

The SPO opposes this bill.

It appears from the verbiage as written, that bids will be submitted but may not be opened until two hours later so that bidders may clarify or correct subcontractor information. There is no utility in the bid closing time to either the State or the contractor if no action may be taken until two hours later. It would be better to delay the bid closing an additional two hours for the entire bid to be due at once. This will also cause considerable cost to the State for those agencies with eProcurement systems as it will take major coding to allow submission of additional information after bid closing and delay bid opening.

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.

Page 7, lines 13 and 14 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.

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR

AND

TO THE SENATE COMMITTEE ON WAYS AND MEANS

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Tuesday, February 28, 2017
9:50 a.m.

WRITTEN TESTIMONY

TESTIMONY ON SENATE BILL NO. 1070, S.D. 1, RELATING TO PROCUREMENT.

TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
TO THE HONORABLE JILL N. TOKUDA, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Candace Ito, Executive Officer for the Contractors License Board ("Board"), Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs. Thank you for the opportunity to provide comments on Senate Bill No. 1070, S.D. 1, which proposes to prohibit bid shopping and bid peddling for the competitive sealed bidding process.

This bill proposes to prohibit the prime contractor from substituting a listed subcontractor; and allows substitution of a listed subcontractor by the prime contractor for reasons (including but not limited to the inability of the listed subcontractor to perform the requirements of the proposed contract or the project).

The Board is concerned with the proposed language that allows a prime contractor to substitute a listed subcontractor due to the inability of the listed

subcontractor to perform the requirements of the proposed contract or the project because allowing this substitution implies that a subcontractor without the appropriate license classification may bid on a construction project. This would conflict with HRS chapter 444 which prohibits unlicensed contracting, and the Board has consistently determined that a contractor who submits a bid is holding oneself out as being able to perform the work and acting as a contractor. Thus, at the time of bid, the entity must be licensed in the proper contractor classification(s) under HRS chapter 444.

This measure may have the unintended consequence of allowing unlicensed entities to bid as subcontractors and later, be substituted at the time of award with a licensed subcontractor.

Thank you for the opportunity to provide comments on Senate Bill No. 1070, S.D. 1.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: gqm@biahawaii.org
Subject: Submitted testimony for SB1070 on Feb 28, 2017 09:50AM
Date: Monday, February 27, 2017 12:35:39 PM

SB1070

Submitted on: 2/27/2017

Testimony for JDL/WAM on Feb 28, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Gladys Quinto Marrone	BIA Hawaii	Support	No

Comments: BIA-Hawaii supports S.B. 1070, SD1, Relating to Procurement, which would allow a bidder two hours after the bid is due to clarify and make a correction to the subcontractor list to mitigate any mistakes. This bill also proposes to define bid-shopping and bid-peddling and would prohibit such practice, while also allowing for the substitution of subcontractors for reasons connected to the subcontractor's ability to perform the work. 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. Legislative history indicates that the purpose for the subcontractor listing is to deter bid-shopping and bid-peddling, however nothing in the law prohibits such therefore this measure as drafted would prohibit such. The BIA 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. Thank you for the opportunity to share with you our views.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

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

February 28, 2017

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

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

SUBJECT: **STRONG SUPPORT OF S.B. 1070, 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 July 1, 2050. (SD1)

HEARING

DATE: February 28, 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 Committees,

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** S.B. 1070, 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.

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.

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

Senate Committee on Ways and Means
Senator Jill N. Tokuda, Chair

Presented By: Tim Lyons, President

Subject: S.B. 1070, SD 1 - RELATING TO PROCUREMENT

Chair Keith-Agaran, Chair Tokuda and Members of the Joint Committees:

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

This bill is based on false assumptions.

Problems with this bill:

Section 1. "Oftentimes these technical mistakes in a low bidder's proposal results in a bid challenge, thus delaying the execution and delivery of public works projects".

Fact: Number of protests in FY 2013, 15; number of protest in FY 2014, 14.

"Delays". **The average duration of a protest in FY 2013...74 days. The average days between bid opening and award for protesting projects...140 days.**

"The legislature further finds that the Contractors License Board recognizes over 100 different specialty contractor licenses the prime bidder must sort through".

Fact: While it is true that there are over 100 specialty contractors licenses it would be difficult to confuse a roofing contractors specialty license with a plumbing contractors specialty license. In reality there are very few contractors licenses that are confusing with each other.

This bill provides "prime contractors with additional time to correct minor technical issues...while maintaining the integrity of the bid process".

Fact: It is impossible to allow general contractors additional time to adjust bids and at the same time maintain the integrity of the bid process.

This bill has three (3) major problems.

One, 103D-302(b) (2) allows two (2) additional hours to "correct" information. This is 120 minutes that general contractors can play games with subcontractors bids, both for the purpose of shopping and bid-chiseling. This is unacceptable. The only one to benefit is the general contractor, not the taxpayer, not the agency and not the project. The difference that the general contractor might steal from the subcontractor goes directly into the general contractor's pocket.

Two. The prohibition on bid shopping or bid peddling is notable but unworkable. It is the subcontractor who would file a complaint or take legal action against a prime contractor for bid shopping. First of all they would not be able to prove it because they would need the cooperation of the prime contractor and the substituted subcontractor. Secondly, in Hawaii's small contracting community the subcontractor who filed an action would be blacklisted and not get any further jobs. This is strictly "feel good" legislation that is unworkable.

Three. The bill lists in (h) three (3) reasons that a listed subcontractor can be substituted. Items 1 and 2 seem to make sense. Item 3 is unclear and subject to abuse. The prime contractor could insist on certain conditions in the contract which could render the subcontractor unable to perform the requirements of the contract. Number 3 needs to be deleted.

SUMMARY. We realize this is a confusing area and as a result the legislature created a Procurement Task Force. The Task Force summarized that the subcontractor listing clause was not in need of repeal. Also noted was that the negative impact of the protest process was "not as substantial as

first thought". The purpose of the subcontractor listing clause is to protect smaller subcontractors who are not in an economically equal bargaining position with general contractors.

It is true that such a clause does not exist on the federal side which is exactly why many subcontractors refuse to bid federal work. They do not want to also be in a position of not bidding state work because there is no subcontractor listing clause.

This bill is bad for subcontractors, bad for the procurement process and bad for the taxpayers of this state.

Thank you.



February 27, 2017

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice-Chair
Senate Committee on Judiciary and Labor

Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice-Chair
Senate Committee on Ways and Means

The Twenty-Ninth Legislature, Regular Session of 2017

Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees:

SUBJECT: SB 1070 SD1 Relating to Procurement

Our company is a Mechanical Contractor performing HVAC, Plumbing and Fire Sprinkler here in Hawaii for over fifty years and we are strongly opposed to SB 1070 SD1.

This bill would allow prime bidders on public works projects:

1. Two hours after the closing of the invitation for bids to provide clarity and correction of the subcontractor information, and
2. an allowance to replace a listed subcontractor due to the inability of the listed subcontractor to perform the requirements of the proposed contract or the project.

The first provision of this bill would provide ample opportunity for a prime bidder to shop bids in the 2 hours after bid closing. Further, there is no explanation on what constitutes "clarity and correction of subcontractor information". Does it allow "correction" of scope and changes in the name of the listed sub? Obviously both of these would allow bid shopping to occur.

The second provision is also very vague and especially ominous in that it creates situations where the prime bidder may either intentionally list subs who the prime bidder knows are unable to perform the requirements of the contract, or may impose detrimental contractual requirements on the listed subcontractors after an award just so the prime bidder can have a reason to make substitutions after shopping prices.

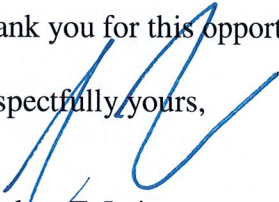
The State Public Procurement Code (HRS Chapter 103D) was developed to provide a fair, open and consistent method of procurement designed to protect public funds. Furthermore, the current subcontractor listing requirement was specifically included in HRS 103D to prevent bid shopping by unscrupulous contractors. This proposed bill allowing bidders two additional hours to correct and clarify

the subcontractor listing and scope of work together with the inclusion of vague allowances for substitutions does not comply with the intent of HRS 103D, nor does it resolve procurement issues, and will only serve to incite the predatory and unfair practice of bid shopping.

We therefore respectfully urge the committee to hold this bill.

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

Respectfully yours,



Stephen T. Leis
President
Dorvin D. Leis Co., Inc.

February 25, 2017

*Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice-Chair
Senate Committee on Judiciary and Labor*

*Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice-Chair
Senate Committee on Ways and Means*

The Twenty-Ninth Legislature, Regular Session of 2017

Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees:

SUBJECT: SB 1070 SD1 Relating to Procurement

HSI Mechanical, Inc. is a Hawai'i corporation and was established in 1974. We currently employ 57 Hawai'i Residence, and we are strongly opposed to SB 1070 SD1.

This bill would allow prime bidders on public works projects:

- 1. two hours after the closing of the invitation for bids to provide clarity and correction of the subcontractor information, and*
- 2. an allowance to replace a listed subcontractor due to the inability of the listed subcontractor to perform the requirements of the proposed contract or the project.*

The first provision of this bill would provide ample opportunity for a prime bidder to shop bids in the 2 hours after bid closing. Further, there is no explanation on what constitutes "clarity and correction of subcontractor information". Does it allow "correction" of scope and changes in the name of the listed sub? Obviously both of these would allow bid shopping to occur.

The second provision is also very vague and especially ominous in that it creates situations where the prime bidder may either intentionally list subs who the prime bidder knows are unable to perform the requirements of the contract, or may impose detrimental contractual requirements on the listed subcontractors after an award just so the prime bidder can have a reason to make substitutions after shopping prices. The State Public Procurement Code (HRS Chapter 103D) was developed to provide a fair, open and consistent method of procurement designed to protect public funds. Furthermore, the current subcontractor listing requirement was specifically included in HRS 103D to prevent bid shopping by unscrupulous contractors. This proposed bill allowing bidders two additional hours to correct and clarify the subcontractor listing and scope of work together with the inclusion of vague allowances for substitutions does not comply with the intent of HRS 103D, nor does it resolve procurement issues, and will only serve to incite the predatory and unfair practice of bid shopping.

We therefore respectfully urge the committee to hold this bill.

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

Please contact me at 808-478-8482 or at me email: fmoore@hsimechanical.com should you have any questions regarding this correspondence.

With Aloha, Fred Moore



From the desk of:
Fred Moore, President /
Principal RME

License: ABC-24578
227 Puuhale Road, Honolulu, HI 96819
Cell: 808-478-8482
Email: fmoore@hsimechanical.com

Our Vision

"hsi mechanical, inc. provides high customer satisfaction, quality, and dependability."



JAYAR CONSTRUCTION, INC.

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

February 27, 2017

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

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

SUBJECT: **SUPPORT OF S.B. 1070, SD1 RELATING TO PROCUREMENT.** Provides
a bidder on 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.

Hearing Date: February 28, 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,

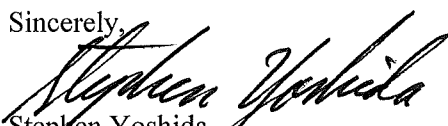
Jayar Construction, Inc. is a locally owned General Contractor that has been in business since 1987. We currently
have over a hundred employees and have been working on public works construction for many years.

Jayar supports the passage of S.B. 1070, SD1, Relating to Procurement, which would amend the current
subcontractor listing requirement by allowing the bidder two hours after the closing of bids to provide
clarification and correction of the subcontractor list, bids would not be opened until after the subcontractor list
was received in final form. Also, this measure includes a provision that would prohibit bid shopping and bid
peddling.

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 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. This measure would allow a bidder two hours after the bid is due to clarify and
make corrections to the subcontractor list to mitigate any mistake. This bill also defines bid-shopping and bid-
peddling and would prohibit such practices.

Jayar supports S.B. 1070, SD1 and recommends its passage.

Sincerely,


Stephen Yoshida,
CFO and Human Resource Manager



general contractor license #ABC 21576

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

February 27, 2017

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

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

SUBJECT: **SUPPORT OF S.B. 1070, 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 July 1, 2050. (SD1)

HEARING


DATE: February 28, 2017
TIME: 9:50 p.m.
PLACE: Capitol Room 211

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

LYZ, Inc. supports the passage of S.B. 1070, 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 for bids to provide clarification and correction of the subcontractor list, bids would not be opened until after the subcontractor list was received in final form. Also this measure includes a provision that would prohibit bid shopping and bid peddling.

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. This measure would allow a bidder two hours after the bid is due to clarify and make a correction to the subcontractor list to mitigate any mistakes. This bill also proposes to define bid-shopping and bid-peddling and would prohibit such practice, while also allowing for the substitution of subcontractors for reasons connected to the subcontractor's ability to perform the work. Legislative history indicates that the purpose for the subcontractor listing is to deter bid-shopping and bid-peddling, however nothing in the law prohibits such thus this measure would identify such.

LYZ, Inc. supports S.B. 1070, SD1 and recommends its passage.


James N. Kurita
Vice President/ Chief Operating Officer



SHARING YOUR VISION. BUILDING SUCCESS.

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

February 28, 2017

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

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

SUBJECT: **SUPPORT OF S.B. 1070, 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 July 1, 2050. (SD1)

HEARING
DATE: February 28, 2017
TIME: 9:50 p.m.
PLACE: Capitol Room 211

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

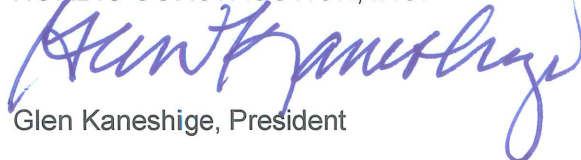
Nordic PCL Construction, Inc. supports the passage of S.B. 1070, SD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by allowing the bidder two hours after the closing for bids to provide clarification and correction of the subcontractor list, bids would not be opened until after the subcontractor list was received in final form. Also this measure includes a provision that would prohibit bid shopping and bid peddling.

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Nordic PCL Construction, Inc. supports S.B. 1070, SD1 and recommends its passage.

Yours truly,

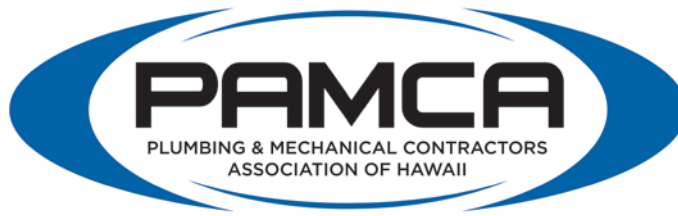
NORDIC CONSTRUCTION, INC.



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



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

GREGG S. SERIKAKU
EXECUTIVE DIRECTOR

February 24, 2017

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice-Chair
Senate Committee on Judiciary and Labor

Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice-Chair
Senate Committee on Ways and Means

The Twenty-Ninth Legislature, Regular Session of 2017

Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees:

SUBJECT: SB 1070 SD1 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 SB 1070 SD1.

This bill would allow prime bidders on public works projects:

1. two hours after the closing of the invitation for bids to provide clarity and correction of the subcontractor information, and
2. an allowance to replace a listed subcontractor due to the inability of the listed subcontractor to perform the requirements of the proposed contract or the project.

The first provision of this bill would provide ample opportunity for a prime bidder to shop bids in the 2 hours after bid closing. Further, there is no explanation on what constitutes "clarity and correction of subcontractor information". Does it allow "correction" of scope and changes in the name of the listed sub? Obviously both of these would allow bid shopping to occur.

The second provision is also very vague and especially ominous in that it creates situations where the prime bidder may either intentionally list subs who the prime bidder knows are unable to perform the requirements of the contract, or may impose detrimental contractual requirements on the listed subcontractors after an award just so the prime bidder can have a reason to make substitutions after shopping prices.

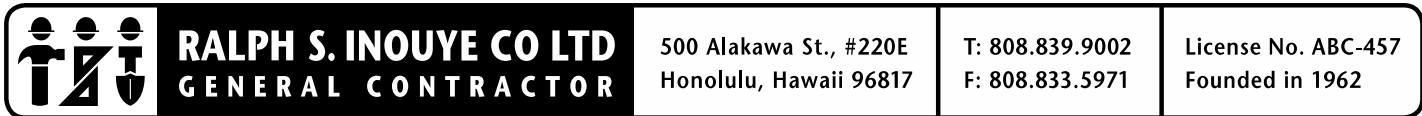
The State Public Procurement Code (HRS Chapter 103D) was developed to provide a fair, open and consistent method of procurement designed to protect public funds. Furthermore, the current subcontractor listing requirement was specifically included in HRS 103D to prevent bid shopping by unscrupulous contractors. This proposed bill allowing bidders two additional hours to correct and clarify the subcontractor listing and scope of work together with the inclusion of vague allowances for substitutions does not comply with the intent of HRS 103D, nor does it resolve procurement issues, and will only serve to incite the predatory and unfair practice of bid shopping.

We therefore respectfully urge the committee to hold this bill.

Respectfully yours,

A handwritten signature in cursive script, reading "Gregg S. Serikaku".

Gregg S. Serikaku
Executive Director



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

February 27, 2017

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

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

SUBJECT: **SUPPORT OF S.B. 1070, 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 July 1, 2050. (SD1)

HEARING

DATE: February 28, 2017
TIME: 9:50 p.m.
PLACE: Capitol Room 211

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

Ralph S Inouye Co, Ltd (RSI), a Hawaii general contractor and member of the General Contractors Association of Hawaii, **supports** the passage of S.B. 1070, 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 for bids to provide clarification and correction of the subcontractor list, bids would not be opened until after the subcontractor list was received in final form. Also this measure includes a provision that would prohibit bid shopping and bid peddling.

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. This measure would allow a bidder two hours after the bid is due to clarify and make a correction to the subcontractor list to mitigate any mistakes. This bill also proposes to define bid-shopping and bid-peddling and would prohibit such practice in accordance with legislative purpose, while also allowing for the substitution of subcontractors for reasons connected to the subcontractor's ability to perform the work.

RSI **supports** S.B. 1070, SD1 and recommends its passage.



S & M SAKAMOTO, INC.
GENERAL CONTRACTORS

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

February 28, 2017

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

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

SUBJECT: **SUPPORT OF S.B. 1070, SD1 RELATING TO PROCUREMENT.** Provides a bidder of a
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peddling for the competitive sealed bidding process. Effective July 1, 2050. (SD1)

HEARING

DATE: February 28, 2017
TIME: 9:50 p.m.
PLACE: Capitol Room 211

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

S & M Sakamoto, Inc. **supports** the passage of S.B. 1070, 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 for bids to provide clarification and correction of the
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subcontractors for reasons connected to the subcontractor's ability to perform the work. Legislative
history indicates that the purpose for the subcontractor listing is to deter bid-shopping and bid-peddling,
however nothing in the law prohibits such thus this measure would identify such.

S & M Sakamoto, Inc. **supports** S.B. 1070, SD1 and recommends its passage.

Very truly yours,

Gerard Sakamoto
Chairman of the Board



Alan Shintani Inc.
GENERAL CONTRACTOR BC 13068

February 28, 2017

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

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

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HEARING

DATE: February 28, 2017
TIME: 9:50 p.m.
PLACE: Capitol Room 211

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

Since 1984, Alan Shintani, Inc. has been providing the best solutions by offering a range of quality general contractor services and construction management for homes, commercial buildings, and government projects in a timely and cost-efficient manner. ASI has earned a solid reputation in Hawaii by continuously striving to succeed in all its construction endeavors through consistent and innovative means of construction services.

Alan Shintani, Inc. supports the passage of S.B. 1070, 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 for bids to provide clarification and correction of the subcontractor list, bids would not be opened until after the subcontractor list was received in final form. Also, this measure includes a provision that would prohibit bid shopping and bid peddling.

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Alan Shintani, Inc. supports S.B. 1070, SD1 and recommends its passage.

Sincerely,

Alan Shintani
President

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: kahakiki@outlook.com
Subject: Submitted testimony for SB1129 on Feb 28, 2017 11:30AM
Date: Saturday, February 25, 2017 10:46:48 AM

SB1129

Submitted on: 2/25/2017

Testimony for JDL on Feb 28, 2017 11:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
MARILYN JOHNSON	Individual	Support	No

Comments: Please help people with terminal illness die without bankrupting the family with futile medical care. The best thing we can do for our loved ones is die with dignity.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov