

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR
MARA SMITH
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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Honolulu, Hawaii 96810-0119
Tel: (808) 586-0554
email: state.procurement.office@hawaii.gov
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Twitter: [@hawaiispo](https://twitter.com/hawaiispo)

TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
GOVERNMENT OPERATIONS
February 2, 2017, 2:45 PM

SENATE BILL 1067
PROCUREMENT; COMPETITIVE SEALED BIDDING; SUBCONTRACTOR; PUBLIC WORKS
CONSTRUCTION PROJECT
RELATING TO PROCUREMENT

Chair Kim, Vice-Chair Ruderman, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 1067.

The SPO is submitting comments to caveat any support of this bill.

Government Burden, Contractor Responsibility, Additional Cost: The SPO is concerned that this action will add more burden to the procurement specialist and transfer the prime contractor's responsibility to be accountable for proposing licensed subcontractors. It may also further delay the award particularly if the apparent lowest bidder's subcontractors are not licensed properly. The process of checking to see if all subcontractors are licensed two days later could delay a project if the listed subcontractors were unable to become compliant between bid opening and award. This would mean that the procurement specialist would now have to evaluate the 2nd low bidder's subcontractors for compliance. Lastly, this will be extremely costly throughout the state for agencies using eProcurement systems as the systems will require major coding to allow submission of additional information after the closing date of the solicitation.

Exemption from HRS Chapter 444: During last Legislative Session, the Regulated Industries Complaints Office (RICO), suggested that procurement specialists might be found to be 'aiding and abetting' prime contractors who submitted unlicensed subcontractors. Thus, verbiage that

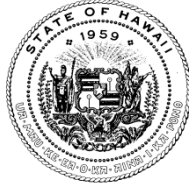
waives procurement specialists from this requirement is recommended. Allowing for licenses to be valid two days after bid closing will require a clear and express legislative exemption from the HRS Ch 444 interpretation that licensing must be in place at the time of submission of bid.

Delaying opening of bids. It appears from the verbiage as written, that bids will be submitted but may not be opened until two days later, when the subcontractor listing is submitted. There is no utility in the bid closing date to either the State or the contractor if no action may be taken until two days later. It would be better to delay the bid closing an additional two days for the entire bid to be due at once.

Impact of Subcontractor Listing to Construction Costs (Reference: Task Force Report, submitted February 3, 2016): The subcontractor listing requirement has also resulted in increased construction costs when the apparent low bidder is displaced due to an error or omission in the subcontractor listing. This occurred for approximately 1% of construction projects awarded in each of fiscal years 2013 and 2014. For the four government agencies who submitted complete data, the listing requirement resulted in \$498,353 of increased construction costs for awards of construction contracts awarded in FY2013 totaling \$897,117,463 (or 0.06%) and \$1,775,321.12 of increased construction costs for construction contracts awarded in FY2014 totaling \$521,725,488 (or 0.34%). It should be noted that the impact on the cost of construction for an individual project can be substantial. For example, on a small project, the apparent Low Bidder "A" whose bid amount was \$150,000 was rejected due to a flaw in the listing of subcontractor(s). The final awarded amount to the 2nd Low Bidder "B" was \$235,000 which increased the bid amount by \$55,215 which is 36.8% more than the original price. Therefore, what the data shows is that impacts to construction costs are relatively small overall, but there could be significant costs impacts to individual projects.

In conclusion, the SPO would need to see the areas of concern above addressed in order to support the bill.

Thank you.



Testimony by:
FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 2, 2017
2:45 p.m.
State Capitol, Room 414

SB 1067
RELATING TO PROCUREMENT

Senate Committee on Government Operations

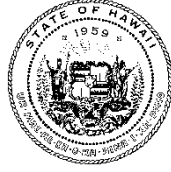
The Department of Transportation (DOT) **supports** the intent of this bill which proposes to allow a bidder two working days after the bid closing date to provide the listing of a joint contractor or subcontractor. It appears that this proposed bill attempts to revise the process and not the substantive subcontractor listing requirement of the Procurement Code.

The HRS § 103D-302(b) subcontractor listing requirement goes to a determination of bidder responsiveness, which is determined at the time the bid is opened. As proposed, this bill contemplates that the bids will not be opened on the closing of the invitation for bids, it will be opened two working days after the closing of the invitation for bids. The process contemplates two dates, 1) a closing bid date and 2) a bid opening date two-working days after the bid closing date.

The intent for the subcontractor listing under the current statute as interpreted by the Hawaii courts remain intact. It is well settled that the primary purpose of the subcontractor listing requirement is to prevent bid shopping and bid peddling. As adjudicated in *Okada Trucking*¹ (quoting *Hawaiian Dredging* (PCH-99-6 (August 9, 1999)), bid shopping, "is the use of the low bid already received by the general contractor to pressure other subcontractors into submitting even lower bids. Bid peddling, conversely, is an attempt by a subcontractor to undercut known bids already submitted to the general contractor in order to procure the job."

Thank you for the opportunity to provide testimony.

DAVID Y. IGE
GOVERNOR



RODERICK K. BECKER
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

TESTIMONY OF
RODERICK K. BECKER, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE ON GOVERNMENT OPERATIONS
ON
THURSDAY, FEBRUARY 2, 2017
2:45 P.M.
CONFERENCE ROOM 414

S.B. 1067

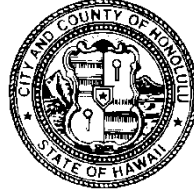
RELATING TO PROCUREMENT.

Chair Kim, Vice Chair Ruderman, and members of the Committee, thank you for the opportunity to submit testimony on S.B. 1067.

The Department of Accounting and General Services appreciates the intent of the bill, but has concerns that it may have unintended consequences. It may unintentionally encourage the substitution of subcontractors.

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

KIRK CALDWELL
MAYOR



NELSON H. KOYANAGI, JR.
DIRECTOR

GARY T. KUOKAWA
DEPUTY DIRECTOR

TESTIMONY OF NELSON H. KOYANAGI, JR.
DIRECTOR OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
BEFORE THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS
February 2, 2017, 2:45 PM, Conference Room 414

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

RE: SUPPORT OF SENATE BILL 1067, "RELATING TO PROCUREMENT"

The Department of Budget and Fiscal Services, City and County of Honolulu (City), **supports** Senate Bill No. 1067, Relating to Procurement.

Subcontractor listing and licensing issues have caused protests and award delays. Providing time for contractors to finalize their subcontractor list and licensing information after the bid closing but before the bid opening will decrease the protests and delays experienced by the City.

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

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

BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU
630 SOUTH BERETANIA STREET
HONOLULU, HI 96843
www.boardofwatersupply.com




February 2, 2017

KIRK CALDWELL, MAYOR

BRYAN P. ANDAYA, Chair
ADAM C. WONG, Vice Chair
DAVID C. HULIHEE
KAPUA SPROAT
KAY C. MATSUI

ROSS S. SASAMURA, Ex-Officio
FORD N. FUCHIGAMI, Ex-Officio

ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer

ELLEN E. KITAMURA, P.E.
Deputy Manager and Chief Engineer 

The Honorable Donna Mercado Kim, Chair
and Members
Committee on Government Operations
State Senate
Hawaii State Capitol, Room 218
415 Beretania Street
Honolulu, Hawaii 96813

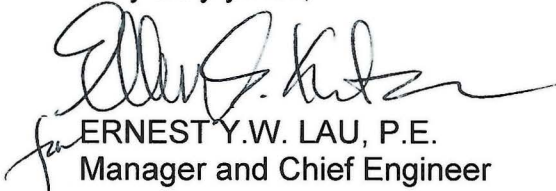
Dear Chair Kim and Members:

SUBJECT: Senate Bill 1067 Relating to Procurement

We oppose Senate Bill 1067. This measure provides bidders on construction projects with two working days after the closing of bids to provide the name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor and the nature and scope of the work to be performed by each joint contractor or subcontractor. We believe that the current rules clearly state the requirements of a properly submitted bid and that providing an additional two working days to correct an incomplete bid will lead to more protests and delays.

Thank you for your consideration of our testimony on Senate Bill 1067.

Very truly yours,


ERNEST Y.W. LAU, P.E.
Manager and Chief Engineer

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



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 2, 2017

TO: HONORABLE DONNA MERCADO KIM, CHAIR, HONORABLE RUSSELL RUDERMAN, VICE CHAIR AND MEMBERS OF THE SENATE 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: Thursday, February 2, 2017
TIME: 2:45 PM
PLACE: Conference Room 414

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

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred seventy 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 **supports** S.B. 1067, Relating to Procurement which proposes to amend the current subcontractor listing requirement under Section 103D-302 by allowing bidders two days to submit the list of subcontractors or joint contractors that will perform under the contract. 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. During the interim, the GCA conducted a Mock Bid Exercise with members of the legislature and agencies who were able to experience first-hand the types of situations that may arise moments before bid submission, including, but not limited to, receiving no bid for a certain scope of work, low bidder subcontractor's license may not be valid, last minute amendment to a sub-quote, exclusions by subcontractors, or late subcontractor bid submissions.

This means that the general contractor does not have time to check whether the subcontractors who have submitted bids meet the requirements to work on the job, especially the proper licenses issued by the Contractors License Board. Given the large number of "C" (currently over 100 issued and growing), it becomes increasingly difficult for the general contractor to ascertain licenses and verify whether every subcontractor has the proper license to perform the work he has submitted a bid to do.

This legislation is not an attempt to give general contractors an advantage in submitting bids, nor is it, as some may argue, an opportunity to bid-shop; instead this legislation is increasing efficiency in the procurement process by allowing contractors to verify the information that subcontractors provide. The proposed legislation does not permit the contractor to change its proposed bid amount. The two days will permit the bidder the ability to ensure the subcontractor/joint contractor list is complete and listed subcontractors/joint contractors are properly licensed, are bondable (where applicable), and have all the required insurance coverage. 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.

This proposed amendment will result in more complete and accurate bid submittals and reduce the number of potential bid protests. For these reasons, we request passage of this measure.



ELECTRICAL CONTRACTOR'S ASSOCIATION OF HAWAII

NECA Hawai'i Chapter

1286 Kalani Street, Suite B-203

Honolulu, Hawai'i 96817

PH: (808) 847-7306

FX: (808) 841-8096

Email: ecah@ecahi.com



January 31, 2017

To: Senate Committee on Government Operations
Honorable Chairperson Kim & Vice Chairman Ruderman

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

Subject: SB 1067 Relating to Procurement

Notice of Hearing

Date: Thursday, February 2, 2017
Time: 2:45 PM
Place: Conference Room 414
State Capitol
415 South Beretania Street

Dear Chair Kim and Committee members:

The Electrical Contractors Association of Hawaii (ECAH) is a non-profit association representing over 100 electrical contractors doing business in the State of Hawaii. ECAH **strongly opposes** the intent and purpose of SB 1067 that would allow the bidder after the closing of the bids, two additional days to provide the name of each joint contractor or subcontractor and the nature of the scope of work of the work to be performed by each. This practice would allow for the unethical practice of bid shopping or bid peddling after the bid is submitted. This would only enrich the bidding contractor and not the State or taxpayers and to the economic detriment of the subcontractor.

While it has been mentioned that the sublisting is problematic in the bidding process and has been the cause of bid protest, delays and cost overruns; data from the Department of Accounting & General Services shows that sublisting issues have had a minimal impact on the State's construction procurement.

Based on the above, ECAH **strongly opposes** the passage of SB 1067 and encourage this committee to kill this bill.

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



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

February 2, 2017

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:

Hawaiian Dredging Construction Company, 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.

Hawaiian Dredging Construction Company, Inc. supports S.B. 1067 and recommends its passage.

With best regards,

A handwritten signature in blue ink, appearing to read 'J. Majkut', is written over the typed name.

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

IRONWORKERS STABILIZATION FUND

February 2, 2017

Donna Mercado Kim, Chair
Committee on Government Operations
State Senate
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Dear Honorable Chair Kim and Members of the Committee on Government Operations:

Re: Strong Opposition for SB 1067 – Relating to Procurement

We are in strong opposition of SB 1067, Relating to Procurement; that allows a bidder on public work construction project two additional day after closing bids to engage a bidder.

The purpose of this bill strongly goes against HRS Section 103D that the legislature has passed and the State of Hawaii has used to provide a fair and open process to bidding for public funded projects. We believe that a solicitor has ample time to obtain the names of the joint contractor or subcontractor for a project. All contractors and subcontractors look at the same bid list and can call each other. What we believe this bill allow is for the solicitor to bid shop and make a greater profit off of the small business men and women.

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

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



Contractor's License No. ABC1036

- MAIN OFFICE: 648 PIILANI STREET, P.O. BOX 4669, HILO, HAWAII 96720
PHONE (808) 935-7194 FAX (808) 961-6417
- KONA BRANCH: 74-5039B QUEEN KAAHUMANU HWY., P.O. BOX 3169, KAILUA-KONA, HI 96740
PHONE (808) 329-8051 FAX (808) 329-3261

ESTABLISHED 1926

An Equal Opportunity Employer

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

February 2, 2017

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:

Isemoto Contracting Co., Ltd. **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.

Isemoto Contracting Co., Ltd. **supports** S.B. 1067 and recommends its passage.

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

Leslie Isemoto,
President



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

February 1, 2017

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

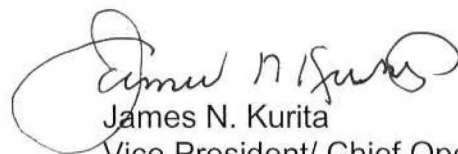
Dear Chair Mercado Kim, Vice Chair Ruderman and Members of the Committee:

LYZ, 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.

LYZ, Inc. supports S.B. 1067 and recommends its passage.



James N. Kurita
Vice President/ Chief Operating Officer



SHARING YOUR VISION. BUILDING SUCCESS.

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

Facsimile: (808) 587-7205

February 2, 2017

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 2, 2017
TIME: 2:45 p.m.
PLACE: CR 414

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

Nordic PCL Construction, 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.

Nordic PCL Construction, Inc. **supports** S.B. 1067 and recommends its passage.

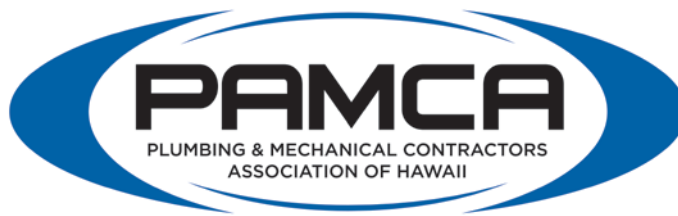
Yours truly,

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



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

GREGG S. SERIKAKU
EXECUTIVE DIRECTOR

Via Email

January 31, 2017

Senator Donna Mercado Kim, Chair
Senator Russel E. Ruderman, Vice-Chair
Senate Committee on Government Operations
The Twenty-Ninth Legislature, Regular Session of 2017

Chair Kim, Vice Chair Ruderman, and Members of the Committee:

SUBJECT: SB1067 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 SB1067.

The State Public Procurement Code (Chapter 103D) was developed to provide a fair, open and consistent method of procurement designed to protect public funds, however, this proposed bill allowing bidders two additional days to submit the subcontractor listing and scope of work 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.

Further, as can be seen in testimony from past years, this type of bill pits general contractors against subcontractors and various trades against each other which is costly for the construction industry, reduces competition, and ultimately increases prices on public works projects.

This issue of subcontractor listing and its effect on the procurement process has been debated numerous times in past legislative sessions and finally in 2013 the Legislature passed SCR92 which convened a task force to look at the overall efficiency of the procurement process for public works projects. From 2013-2015 this task force, which included the major state and county procurement agencies, labor groups, general contractors, subcontractors and various trade associations, convened regularly to gather data on procurement delays, discuss issues impacting the procurement process, and to provide possible solutions to these issues.

One of the most important duties of the task force was to collect accurate unbiased data on protests so that the parties involved could rationally determine whether a problem exists, the size of the problem if any, and to make measured recommendations on possible solutions.

In this regard, the data gathered by the task force indicated that the total number of protests during the 2013/2014 fiscal year actually represented a very small percentage (less than 5%) of the total construction jobs procured by the reporting agencies, and that the increase in the contract price of bids going to the non low bidder due to protests was less than 1%. These percentages are further minimized when segregating those protests where the subcontractor listing was identified as an issue.

These results clearly show that the number and costs of protests are minimal, and in most cases prime bidders were able to correctly follow the procurement rules and subcontractor listing requirements.

Therefore, while our Association supports an expeditious procurement process and minimizing frivolous protests, we do not feel that degrading the subcontractor listing requirement by allowing extra time for submission is the correct answer.

We propose that representatives from both the prime bidders and subcontractors work together on language that will help to address each parties' specific concerns to minimize frivolous protests, while maintaining a fair bidding environment.

We therefore respectfully urge the committee to hold this bill.

Respectfully yours,



Gregg S. Serikaku
Executive Director



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: GVOTestimony@capitol.hawaii.gov
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February 1, 2017

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 2, 2017

TIME: 2:45 p.m.

PLACE: CR 414

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

Ralph S Inouye Co, Ltd (RSI), a Hawaii general contractor and member of the General Contractors Association of Hawaii, **supports** the passage of 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 provide time for the bidder to insure that all subcontractors it intends to list meet all of the requirements to perform the work described, including meeting all licensing, bonding and insurance requirements, as applicable. The additional time is necessary because in many cases the general contractor does not receive bids from the various subcontractors until shortly before the bid must be submitted to the state agency. This will reduce the likelihood of errors and potentially reduce 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.

Thank you for your kind consideration.



S & M SAKAMOTO, INC.
GENERAL CONTRACTORS

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

February 2, 2017

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:

S & M Sakamoto, 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.

S & M Sakamoto, Inc. supports S.B. 1067 and recommends its passage.

Very truly yours,
S & M Sakamoto, Inc.

Gerard Sakamoto
Chairman of the Board

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 Government Operations
Senator Donna Mercado Kim, Chair

Presented By: Tim Lyons, President

Subject: S.B. 1067 - RELATING TO PROCUREMENT

Chair Mercado Kim and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we vigorously oppose this bill. The SAH represents the following nine separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

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

Section 1 of the bill rubs us the wrong way just because it comes to a number of conclusions that are not based on fact. Although the bill talks about the State having increased cost for public works projects due to the subcontractor listing requirement, it does not give you the courtesy of explaining why that might be.

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

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

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

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

When the bidder has two (2) additional days after closing of the bids to provide the name of each subcontractor it only allows two (2) additional days for bid shopping to the advantage of the general contractor and to the disadvantage of the subcontractor.

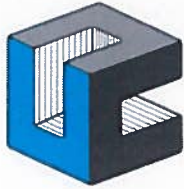
We would also like to note to this Committee that there are a wide variety of contractors who refuse to bid federal work because there is no such similar requirement on federal procurement contracts.

Because they have experienced constant bid shopping and chiseling by general contractors they refuse to participate in that process. We would not like to see the same thing happen to state and county contracts and experience any lessening of the competition.

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

In summary, we cannot support this bill. We think it will be a disastrous for subcontractors, the state procurement process and the taxpayer's.

Thank you.



UNLIMITED
CONSTRUCTION SERVICES, INC

License #ABC-16638

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

Facsimile: (808) 587-7205

February 2, 2017

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:

UNLIMITED CONSTRUCTION SERVICES, 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.

Unlimited Construction Services, Inc. supports S.B. 1067 and recommends its passage.

Sincerely,

UNLIMITED CONSTRUCTION SERVICES, INC.

Jay T. Manzano
President

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

February 2, 2017

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:

Alexander Pacific, 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.

Alexander Pacific, Inc. **supports** S.B. 1067 and recommends its passage.

Sincerely,

Ryan Ward, P.E.
Vice President, Alexander Pacific, Inc.

HEARING BEFORE THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Senate Bill 1067 Relating To Procurement

Chair Kim and Members of the Committee:

Thank you for this opportunity to submit testimony on behalf of the Painting Industry of Hawaii Labor Management Cooperation Trust Fund, Hawaii Tapers Market Recovery Trust Fund, Hawaii Glaziers, Architectural Metal Glassworkers Local Union 1889 AFL-CIO Stabilization Trust Fund, and Carpet, Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund in **strong opposition** to Senate Bill 1067, which seeks to alter State law requiring the listing of subcontractors in public construction projects by allowing a general contractor up to two days to name its subcontractors on the project.

State law requiring the listing of subcontractors is the primary protection for subcontractors from predatory bid shopping or bid peddling practices. These unethical practices inure to the benefit of the general contractor only, not to the landowner or procurement agency. Allowing the general contractor two days to name its subcontractors eviscerates all protections for the subcontractor because it gives the general contractor two days in which to bid shop subcontractors who have already submitted their best prices. This practice undermines public confidence in the procurement system and promotes substandard work and/or delays.

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

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

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