

# **SB 1070, SD2**

**RELATING TO PROCUREMENT.**

**LAB/EDB, FIN**

# SB1070 SD2

Submit Testimony

**Measure Title:** RELATING TO PROCUREMENT.

**Report Title:** Procurement; Competitive Sealed Bidding; Subcontractor; Public Works Construction Project; Bid Shopping; Bid Peddling

**Description:** 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 1/7/2059. (SD2)

**Companion:** [HB573](#)

**Package:** None

**Current Referral:** LAB/EDB, FIN

**Introducer(s):** KIM, ESPERO, HARIMOTO, K. KAHELE, Dela Cruz, Gabbard, Galuteria, Ihara, Keith-Agaran, Nishihara, Riviere, Taniguchi

<u>Sort by Date</u>		Status Text
1/25/2017	S	Introduced.
1/25/2017	S	Passed First Reading.
1/27/2017	S	Referred to GVO, JDL.
1/30/2017	S	The committee(s) on GVO has scheduled a public hearing on 02-02-17 2:45PM in conference room 414.
2/2/2017	S	The committee(s) on GVO deferred the measure until 02-09-17 3:00PM in conference room 414.
2/7/2017	S	The committee on GVO has rescheduled its decision making to 02-09-17 3:00PM in conference room 224.
2/9/2017	S	The committee(s) on GVO recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in GVO were as follows: 3 Aye(s): Senator(s) Kim, Ruderman, K. Rhoads; Aye(s) with reservations: none ; 0 No(es): none; and 2 Excused: Senator(s) Galuteria, Tokuda.
2/10/2017	S	Re-Referred to GVO, JDL/WAM.

2/15/2017	S	Reported from GVO (Stand. Com. Rep. No. 308) with recommendation of passage on Second Reading, as amended (SD 1) and referral to JDL/WAM.
2/15/2017	S	Report adopted; Passed Second Reading, as amended (SD 1) and referred to JDL/WAM.
2/24/2017	S	The committee(s) on JDL/WAM will hold a public decision making on 02-28-17 9:50AM in conference room 211.
2/28/2017	S	The committee(s) on JDL recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in JDL were as follows: 3 Aye(s): Senator(s) Keith-Agaran, K. Rhoads, L. Thielen; Aye(s) with reservations: none ; 0 No(es): none; and 2 Excused: Senator(s) Gabbard, Kim.
2/28/2017	S	The committee(s) on WAM recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in WAM were as follows: 9 Aye(s): Senator(s) Tokuda, Dela Cruz, English, Galuteria, Harimoto, K. Kahele, Riviere, Shimabukuro, Taniguchi; Aye(s) with reservations: none ; 0 No(es): none; and 2 Excused: Senator(s) Inouye, Wakai.
3/3/2017	S	Reported from JDL/WAM (Stand. Com. Rep. No. 780) with recommendation of passage on Third Reading, as amended (SD 2).
3/3/2017	S	48 Hrs. Notice 03-07-17.
3/7/2017	S	Report adopted; Passed Third Reading, as amended (SD 2). Ayes, 25; Aye(s) with reservations: none . Noes, 0 (none). Excused, 0 (none). Transmitted to House.
3/7/2017	H	Received from Senate (Sen. Com. No. 335) in amended form (SD 2).
3/9/2017	H	Pass First Reading
3/9/2017	H	Referred to LAB/EDB, FIN, referral sheet 27
3/17/2017	H	Bill scheduled to be heard by LAB/EDB on Tuesday, 03-21-17 10:30AM in House conference room 309.

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# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the Hawaii Public  
2 Procurement Code requires bid proposals to include the name and  
3 scope of work of subcontractors and joint contractors that will  
4 be used on a public works project. Time constraints between the  
5 time a bidder receives all subcontractor bids and the bid  
6 submission deadline, as well as the complexity of licensing  
7 requirements, can cause inadvertent failure by a bidder to list  
8 a required subcontractor or cause a bidder to list an improperly  
9 licensed subcontractor in a bid. Oftentimes these technical  
10 mistakes in a low bidder's proposal results in a bid challenge,  
11 thus delaying the execution and delivery of public works  
12 projects. Some bid challenges have been made for failure to  
13 list subcontractors appropriately. As a result of bid  
14 challenges, projects are delayed, funding lapses, and the final  
15 project cost may increase.

16           The legislature further finds that the contractors license  
17 board recognizes over one hundred different specialty contractor



1 licenses that a prime bidder must sort through to determine the  
2 appropriate subcontractor specialty to be listed on a bid. The  
3 legislature additionally finds that in comparison, the federal  
4 government does not require the listing of subcontractors on any  
5 bid proposal and the 2000 American Bar Association's Model  
6 Procurement Code, the model for the Hawaii Public Procurement  
7 Code, does not include a subcontractor listing requirement.  
8 Twenty states and the federal government do not even require a  
9 general contractor's license to bid on or perform construction  
10 work. While subcontractor listing proponents cite legislative  
11 intent and the deterrent of bid shopping and bid peddling in  
12 support of the listing requirement, providing prime contractors  
13 with additional time to correct minor technical issues with  
14 subcontractor listings would facilitate the legislature's intent  
15 of ensuring that subcontractors are listed properly on the bid  
16 submittal and are licensed and qualified in the scope and nature  
17 of the work to be performed, while maintaining the integrity of  
18 the bid process.

19 However, the legislature finds that the unscrupulous  
20 practices of bid shopping and bid peddling still plague Hawaii's  
21 construction industry. The state of Washington prohibits bid  
22 shopping and bid peddling and affords subcontractors affected by



1 those practices a legal means of redress. The legislature finds  
2 that enacting similar legislation will curtail bid shopping and  
3 bid peddling in the State.

4 The purpose of this Act is to:

- 5 (1) Minimize bid challenges, costs, and delays of public  
6 works construction projects by providing a bidder of a  
7 public works construction project with two hours after  
8 the closing of a bid to clarify and correct minor  
9 technical issues with subcontractor listings; and
- 10 (2) Further curb undesirable bid shopping and bid peddling  
11 practices in public works by affording subcontractors  
12 affected by those practices a legal means of redress.

13 SECTION 2. Section 103D-302, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§103D-302 Competitive sealed bidding.** (a) Contracts  
16 shall be awarded by competitive sealed bidding except as  
17 otherwise provided in section 103D-301. Awards of contracts by  
18 competitive sealed bidding may be made after single or multi-  
19 step bidding. Competitive sealed bidding does not include  
20 negotiations with bidders after the receipt and opening of bids.  
21 Award is based on the criteria set forth in the invitation for  
22 bids.



1 (b) An invitation for bids shall be issued, and shall  
2 include a purchase description and all contractual terms and  
3 conditions applicable to the procurement. If the invitation for  
4 bids is for construction, it shall specify:

5 (1) Specify that all bids include the name of each person  
6 or firm to be engaged by the bidder as a joint  
7 contractor or subcontractor in the performance of the  
8 contract and the nature and scope of the work to be  
9 performed by each[-]; and

10 (2) Allow the bidder two hours after the closing of the  
11 invitation for bids to provide clarity and correction  
12 of the subcontractor information required by paragraph

13 (1).

14 Construction bids that do not comply with [~~this~~  
15 ~~requirement~~] this subsection may be accepted if acceptance is in  
16 the best interest of the State and the value of the work to be  
17 performed by the joint contractor or subcontractor is equal to  
18 or less than one per cent of the total bid amount.

19 (c) Adequate public notice of the invitation for bids  
20 shall be given a reasonable time before the date set forth in  
21 the invitation for the opening of bids. The policy board shall  
22 adopt rules which specify:



- 1 (1) The form that the notice is to take;
- 2 (2) What constitutes a reasonable interim between
- 3 publication and bid opening; and
- 4 (3) How notice may be published, including publication in
- 5 a newspaper of general circulation, notice by mail to
- 6 all persons on any applicable bidders mailing list,
- 7 publication by any public or private telecommunication
- 8 information network, or any other method of
- 9 publication it deems to be effective.

10 (d) Bids shall be opened publicly in the presence of one  
11 or more witnesses, at the time and place designated in the  
12 invitation for bids[-]; provided that if the bid is for  
13 construction, it shall be opened no sooner than two hours after  
14 the closing of the invitation for bids. The amount of each bid  
15 and other relevant information specified by rule, together with  
16 the name of each bidder shall be recorded. The record and each  
17 bid shall be open to public inspection.

18 (e) Bids shall be unconditionally accepted without  
19 alteration or correction, except as authorized in this chapter  
20 or by rules adopted by the policy board.

21 (f) Bids shall be evaluated based on the requirements set  
22 forth in the invitation for bids. These requirements may





1 include criteria to determine acceptability such as inspection,  
2 testing, quality, workmanship, delivery, and suitability for a  
3 particular purpose. Those criteria that will affect the bid  
4 price and be considered in evaluation for award shall be  
5 objectively measurable, such as discounts, transportation costs,  
6 and total or life cycle costs. The invitation for bids shall  
7 set forth the evaluation criteria to be used. No criteria may  
8 be used in bid evaluation that are not set forth in the  
9 invitation for bids.

10 (g) Correction or withdrawal of inadvertently erroneous  
11 bids before or after award, or cancellation of invitations for  
12 bids, awards, or contracts based on such bid mistakes, shall be  
13 permitted in accordance with rules adopted by the policy board.  
14 After bid opening no changes in bid prices or other provisions  
15 of bids prejudicial to the interest of the public or to fair  
16 competition shall be permitted. Except as otherwise provided by  
17 rule, all decisions to permit the correction or withdrawal of  
18 bids, or to cancel awards or contracts based on bid mistakes,  
19 shall be supported by a written determination made by the chief  
20 procurement officer or head of a purchasing agency.

21 (h) The substitution of a listed subcontractor in  
22 furtherance of bid shopping or bid peddling before or after the



1 award of the prime contract shall be prohibited, and the  
2 originally listed subcontractor may recover monetary damages  
3 against the prime contractor who executed a contract with the  
4 governmental body and the substituted subcontractor, but shall  
5 not be entitled to monetary damages from the governmental body  
6 that issued the invitation for bids. Substitution of a listed  
7 subcontractor may be made by the prime contractor for the  
8 following reasons:

- 9       (1) Refusal of the listed subcontractor to sign a contract  
10           with the prime contractor;  
11       (2) Bankruptcy or insolvency of the listed subcontractor;  
12           or  
13       (3) Inability of the listed subcontractor to perform the  
14           requirements of the proposed contract or the project.

15       As used in this subsection:

16       "Bid peddling" means attempts by a subcontractor to  
17 undercut known bids submitted to the prime contractor to procure  
18 a job.

19       "Bid shopping" means the use of a low bid already received  
20 by the prime contractor to pressure other subcontractors into  
21 submitting even lower bids.



1           ~~[(h)]~~ (i) The contract shall be awarded with reasonable  
2 promptness by written notice to the lowest responsible and  
3 responsive bidder whose bid meets the requirements and criteria  
4 set forth in the invitation for bids. In the event all bids  
5 exceed available funds as certified by the appropriate fiscal  
6 officer, the head of the purchasing agency responsible for the  
7 procurement in question is authorized in situations where time  
8 or economic considerations preclude resolicitation of work of a  
9 reduced scope to negotiate an adjustment of the bid price,  
10 including changes in the bid requirements, with the low  
11 responsible and responsive bidder, in order to bring the bid  
12 within the amount of available funds.

13           ~~[(i)]~~ (j) When it is not practicable to initially prepare  
14 a purchase description to support an award based on price, an  
15 invitation for bids, which requests the submission of unpriced  
16 offers to be followed by an invitation for bids limited to those  
17 bidders whose offers have been qualified under the criteria set  
18 forth in the first solicitation, may be used. If a multi-step  
19 sealed bidding process is used, the notice and the invitation  
20 for bids shall describe each step to be used in soliciting,  
21 evaluating, and selecting unpriced offers."



1 SECTION 3. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 4. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect on January 7, 2059.

7



**Report Title:**

Procurement; Competitive Sealed Bidding; Subcontractor; Public Works Construction Project; Bid Shopping; Bid Peddling

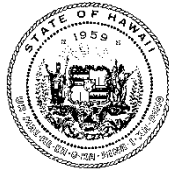
**Description:**

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 1/7/2059. (SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



DAVID Y. IGE  
GOVERNOR



SARAH ALLEN  
ADMINISTRATOR  
MARA SMITH  
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

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TESTIMONY  
OF  
SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE  
  
TO THE HOUSE COMMITTEES  
ON  
LABOR AND PUBLIC EMPLOYMENT  
AND  
ECONOMIC DEVELOPMENT AND BUSINESS  
March 21, 2017, 10:30 AM  
  
SENATE BILL 1070 SD2  
RELATING TO PROCUREMENT

Chairs Johanson and Nakahima, Vice-Chairs Holt and Keohokalole, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 1070 SD2. The SPO **opposes** this bill.

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

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

In addition, the Executive Branch, UH, DOE, the Counties as well as other CPO Jurisdictions use a plethora of eProcurement systems for construction invitation for bids that are programmed to publically close the bid at bid date and time due with no allowances for later submission, access or publication. It would cost thousands of dollars to have each system adjusted for this two-hour caveat, and the counties, who currently use a free system, would be forced to move to a

custom eProcurement system which could end up costing hundreds of thousands of tax payer dollars.

- B. Section 2. Page 6, Lines 21-22, and Page 7, Lines 1-21, and Page 6, Lines 1-9 states the reasons for substituting a subcontractor before and after award.

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

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

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

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

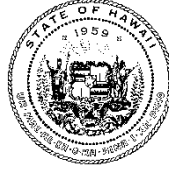
- C. Section 2. Page 7, lines 13 and 14 list the following as one of the reasons a prime may substitute a subcontractor: "...Inability of the listed subcontractor to perform the requirements of the proposed contract or the project..."

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.

DAVID Y. IGE  
GOVERNOR



RODERICK K. BECKER  
Comptroller

AUDREY HIDANO  
Deputy Comptroller

**STATE OF HAWAII**  
**DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES**

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

TESTIMONY OF  
RODERICK K. BECKER, COMPTROLLER  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
TO THE  
HOUSE COMMITTEES ON LABOR AND PUBLIC EMPLOYMENT  
AND  
ECONOMIC DEVELOPMENT AND BUSINESS  
ON  
TUESDAY, MARCH 21, 2017  
10:30 A.M.  
CONFERENCE ROOM 309

S.B. 1070, S.D. 2

RELATING TO PROCUREMENT.

Chairs Johanson and Nakashima, Vice Chairs Holt and Keohokalole, and members of the Committees, thank you for the opportunity to submit testimony on S.B. 1070, S.D. 2.

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

1. DAGS has concerns with allowing the substitution of subcontractors prior to the award. Most departments that do construction contracting already have provisions within the General Terms and Conditions of their contracts that specify the circumstances under which they will consider allowing the substitution of subcontractors by the prime contractor; therefore, inserting such provisions into statute may be unnecessary. In the normal course, DAGS does not consider the



substitution of subcontractors until after award, which provides the opportunity to approve or deny the substitution. Under the proposed measure, it is unclear whether the State is permitted to consider the reasons for such substitutions and determine whether to allow or disallow the substitution. DAGS believes that the state entity should always have the option to allow or disallow the substitution, and the burden of justifying the substitution should remain with the prime contractor.

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

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



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

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

TO THE HOUSE COMMITTEE  
ON  
LABOR AND PUBLIC EMPLOYMENT

AND

TO THE HOUSE COMMITTEE  
ON  
ECONOMIC DEVELOPMENT AND BUSINESS

TWENTY-NINTH STATE LEGISLATURE  
REGULAR SESSION, 2017

TUESDAY, MARCH 21, 2017  
10:30 A.M.

TESTIMONY ON SENATE BILL NO. 1070 S.D.2  
RELATING TO PROCUREMENT

TO THE HONORABLE AARON LING JOHANSON, CHAIR,  
TO THE HONORABLE MARK M. NAKASHIMA, CHAIR,  
AND TO THE HONORABLE DANIEL HOLT, VICE CHAIR,  
AND TO THE HONORABLE JARRETT KEOHOKALOPE, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs ("Department")  
appreciates the opportunity to testify on Senate Bill No. 1070 S.D.2, 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.2 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.

RICO notes that the Committees heard the companion measure, House Bill No. 573, and passed out a House Draft 1 that prohibits the substitution of a listed subcontractor in furtherance of bid shopping or bid peddling, but allows for the substitution of a listed subcontractor for six specific reasons, including the inability of the listed subcontractor to perform the proposed contract. Thereafter, the House Committee on Finance passed out House Bill No. 573 H.D.1 without amendments.

Senate Bill No. 1070 S.D.2 and House Bill No. 573 H.D.1 contradict 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. While RICO is open to working with the Board and bill proponents, we

Testimony on Senate Bill No. 1070 S.D.2

March 21, 2017

Page 3

do believe that this bill and its House counterpart allow unlicensed contractors to engage in licensed activity.

Thank you for the opportunity to testify on Senate Bill No. 1070 S.D.2. I will be happy to answer any questions the Committees may have.

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



# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 21, 2017

TO: HONORABLE AARON LING JOHANSON, CHAIR, HONORABLE DANIEL HOLT,  
VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND  
PUBLIC EMPLOYMENT

HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT  
KEOHOKALOLE, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE  
ON ECONOMIC DEVELOPMENT AND BUSINESS

SUBJECT: **STRONG SUPPORT OF S.B. 1070, SD2 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  
1/7/2059. (SD2)

#### HEARING

DATE: March 21, 2017  
TIME: 10:30 a.m.  
PLACE: Capitol Room 309

Dear Chair Johanson, Chair Nakashima, Vice Chair Holt, Vice Chair Keohokalole 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, SD2 Relating to Procurement, which would amend the  
current procurement subcontractor listing requirement under Section 103D-302, HRS by  
allowing the bidder two hours after the closing of bids to provide clarification or correction to the  
subcontractor listing submission, thereafter bids would then be opened after the two hour period.  
Also this measure includes a provision that defines bid-shopping and bid-peddling and prohibits  
such practice, while also allowing for the substitution of subcontractors for reasons connected to  
the subcontractor's ability to perform the work, language which is in part borrowed from  
Washington State's statute. Current Hawaii law under HRS, Section 103D-302(b) requires the  
bidding contractor to list all subcontractors and joint contractors and their scope of work to be  
employed on public works projects unless the prime contractor has the required specialty license  
or will do the work themselves. Legislative history indicates that the purpose for the  
subcontractor listing is to deter bid-shopping and bid-peddling, however the subcontractor listing  
requirement has become a tool for bidders to find flaws in another bidder's submission and deem  
them non-responsive.

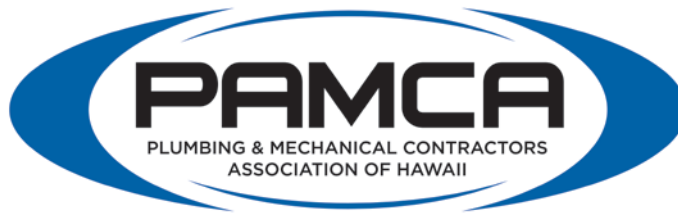
While opponents of this bill may argue that allowing a bidder two extra hours to submit their subcontractor list would allow bid shopping or bid peddling to occur, we argue that these types of practices are found to be abhorrent and not tolerated in the industry as a whole. **Furthermore, GCA's national organization, Associated General Contractors of America (AGC), is resolutely opposed to the practice of bid shopping. Consequently, the AGC, the American Subcontractors Association, and the Associated Specialty Contractors issued this joint statement in 1995 on the issue of bid shopping and bid peddling: "Bid shopping or bid peddling are abhorrent business practices that threaten the integrity of the competitive bidding system that serves the construction industry and the economy so well." AGC strongly believes that bid shopping and bid peddling cannot sustain long-term working relationships between prime and subcontractors.**" *Associated General Contractors Association*. Website accessed on March 12, 2017 at <https://www.agc.org/industry-priorities/procurement/bid-shopping>.

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

In the last decade the subcontractor listing requirement has been used beyond its legislative intent by many non-low bidders to identify faults of winning bidders who either fail to list a subcontractor or inadvertently and erroneously complete the list. As a result of the subcontractor listing requirement, the failure to list such subcontractor altogether or a subcontractor whose work would total more than one percent of the total contract could trigger an inquiry which could lead to a formal bid protest whereby the non-lowest bidder could throw out the apparent lowest bidder from being awarded the contract. This has resulted in delays in awarding the contract to address the protest and in the event the low bidder is disqualified, there is additional cost to the agency and taxpayers if the contract is awarded to another bidder. This measure would permit a bidder to make a correction within two hours after the bid was submitted to ensure any errors are mitigated prior to opening of the bids.

More recently, **the subcontractor listing has been one of the main reasons why public works projects are being awarded to non-low bidders.** Further the subcontractor listing requirement has led to administratively filed bid protests, resulting in increased cost of public projects, delay of contract award and further administrative burden for affected agencies. One agency reported that the listing law and subsequent awards to non-low bidders have cost taxpayers millions.

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



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

GREGG S. SERIKAKU  
EXECUTIVE DIRECTOR

Via Email

March 17, 2017

Representative Aaron Ling Johanson, Chair  
Representative Daniel Holt, Vice-Chair  
House of Representatives Committee on Labor and Public Employment

Representative Mark M. Nakashima, Chair  
Representative Jarrett Keohokalole, Vice Chair  
House of Representatives Committee on Economic Development and Business

Chairs Johanson and Nakashima, Vice Chairs Holt and Keohokalole, and Members of the Committees:

**SUBJECT: SB1070 SD2 Relating to Procurement**

My name is Gregg Serikaku and I am the Executive Director of the Plumbing and Mechanical Contractors Association of Hawaii. The Association for which I speak is **opposed to SB1070 SD2.**

This bill proposes the following:

1. Allow prime bidders on public works projects two hours after the closing of the invitation for bids to provide clarity and correction of the subcontractor listing information submitted with the bid.
2. Allow prime bidders to replace a listed subcontractor due to the refusal or inability of the listed subcontractor to sign a contract or perform the requirements of the proposed contract or the project.

The first provision does not provide a clear explanation on what constitutes "clarity and correction of subcontractor information". While we understand the desire to develop allowances for certain minor items, we are strongly opposed to vague language that may be interpreted to allow for the addition of previously unlisted subcontractors or for changes in the scope of listed subcontractors, since "corrections" of this type would allow bid shopping to occur.

The second provision is unnecessary. Under the current rules, if a listed subcontractor refuses to sign a contract or is unable to perform the requirements of the proposed contract or project, the listed subcontractor may provide a letter to the prime bidder requesting that they be released from the project thereby allowing the prime bidder to make a substitution. This release letter is very important because it provides the procurement officer with documentation to verify and substantiate the need to replace the listed subcontractor.

Thank you for this opportunity to provide our testimony in opposition.

Respectfully yours,

A handwritten signature in black ink that reads "Gregg S. Serikaku".

Gregg S. Serikaku  
Executive Director

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

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

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

March 21, 2017

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

House Committee on Economic Development & Business  
Representative Mark M. Nakashima, Chair

Presented By: Tim Lyons, President

Subject: S.B. 1070, SD 2 - RELATING TO PROCUREMENT

Chair Johanson, Chair Nakashima and Members of the Joint Committees:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. We are not in support of this bill as it is written. 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 deals with the sensitive matter of bid-shopping and bid peddling.

We realize that the Committee has been all through the arguments and we don't wish to belabor the point. We don't think that addressing the illegality of bid-shopping and bid peddling will do much to curb it because we think it is the kind of act that is next to impossible to prove unless one is willing to "cut their own throat". In other words there will be no cooperation for this type of case.

We have suggested some amendments to the reasons that a substitution of a listed subcontractor can be made by the prime contractor and we hope that you will undertake those amendments as part of any bill that might move forward.

Lastly, and in summary, we would only like to point out that subcontractor listing is for the protection of the more minor subcontractor that any bid-shopping or bid peddling typically goes in favor of the general contractor and not in favor of the taxpayer or the project and that all of the bid processing errors that general contractors are complaining about can be addressed through legislation allowing for correction of technical mistakes rather than opening up the entire sublisting requirements.

Based on the above, we are not in support of the bill as it is written however we have attached a proposed H.D. 1 for your consideration.

Thank you.

Proposed H.D.1

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A BILL FOR AN ACT

RELATING TO PROCUREMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. The legislature finds that the Hawaii Public Procurement Code requires bid proposals to include the name and scope of work of subcontractors and joint contractors that will be used on a public works project. Time constraints between the time a bidder receives all subcontractor bids and the bid submission deadline, as well as the complexity of licensing requirements, can cause inadvertent failure by a bidder to list a required subcontractor or cause a bidder to list an improperly licensed subcontractor in a bid. 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. Some bid challenges have been made for failure to list subcontractors appropriately. As a result of bid challenges, projects are delayed, funding lapses, and the final project cost may increase.

The legislature further finds that the contractors license board recognizes over one hundred different specialty contractor licenses that a prime bidder must sort through to determine the appropriate subcontractor specialty to be listed on a bid. The legislature additionally finds that in comparison, the federal government does not

require the listing of subcontractors on any bid proposal and the 2000 American Bar Association's Model Procurement Code, the model for the Hawaii Public Procurement Code, does not include a subcontractor listing requirement. Twenty states and the federal government do not even require a general contractor's license to bid on or perform construction work. While subcontractor listing proponents cite legislative intent and the deterrent of bid shopping and bid peddling in support of the listing requirement, providing prime contractors with additional time to correct minor technical issues with subcontractor listings would facilitate the legislature's intent of ensuring that subcontractors are listed properly on the bid submittal and are licensed and qualified in the scope and nature of the work to be performed, while maintaining the integrity of the bid process.

However, the legislature finds that the unscrupulous practices of bid shopping and bid peddling still plague Hawaii's construction industry. The state of Washington prohibits bid shopping and bid peddling and affords subcontractors affected by those practices a legal means of redress. The legislature finds that enacting similar legislation will curtail bid shopping and bid peddling in the State.

The purpose of this Act is to **curb undesirable bid shopping and bid peddling practices in public works by affording subcontractors affected by those practices a legal means of redress.**

SECTION 2. Section 103D-302, Hawaii Revised Statutes, is amended to read as follows:

**"§103D-302 Competitive sealed bidding.** (a) Contracts shall be awarded by competitive sealed bidding except as otherwise provided in section 103D-301. Awards of contracts by competitive sealed bidding may be made after single or multi-step bidding. Competitive sealed

bidding does not include negotiations with bidders after the receipt and opening of bids. Award is based on the criteria set forth in the invitation for bids.

(b) An invitation for bids shall be issued, and shall include a purchase description and all contractual terms and conditions applicable to the procurement. If the invitation for bids is for construction, it shall **specify that all bids include the name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the contract and the nature and scope of the work to be performed by each.**

Construction bids that do not comply with [~~this requirement~~] this subsection may be accepted if acceptance is in the best interest of the State and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than one per cent of the total bid amount.

(c) Adequate public notice of the invitation for bids shall be given a reasonable time before the date set forth in the invitation for the opening of bids. The policy board shall adopt rules which specify:

- (1) The form that the notice is to take;
- (2) What constitutes a reasonable interim between publication and bid opening; and
- (3) How notice may be published, including publication in a newspaper of general circulation, notice by mail to all persons on any applicable bidders mailing list, publication by any public or private telecommunication information network, or any other method of publication it deems to be effective.

(d) Bids shall be opened publicly in the presence of one or more witnesses, at the time and place designated in the invitation for bids. The amount of each bid and other relevant information specified by rule, together with the name of each bidder shall be recorded. The record and each bid shall be open to public inspection.

(e) Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter or by rules adopted by the policy board.

(f) Bids shall be evaluated based on the requirements set forth in the invitation for bids. These requirements may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

(g) Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of invitations for bids, awards, or contracts based on such bid mistakes, shall be permitted in accordance with rules adopted by the policy board. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the public or to fair competition shall be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the chief procurement officer or head of a purchasing agency.

(h) The substitution of a listed subcontractor in furtherance of bid shopping or bid peddling before or after the award of the prime contract shall be prohibited, and the originally listed subcontractor may recover monetary damages against the prime contractor who executed a contract with the governmental body and the substituted

subcontractor, but shall not be entitled to monetary damages from the governmental body that issued the invitation for bids. Substitution of a listed subcontractor may be made by the prime contractor for the following reasons:

(1) Refusal of the listed subcontractor to sign a contract with the prime contractor;

(2) Bankruptcy or insolvency of the listed subcontractor; or

(3) Inability of the listed subcontractor to perform the **contractual** requirements of the proposed contract or the project **consistent with the terms and written understandings of the parties at the time of bid.**

As used in this subsection:

"Bid peddling" means attempts by a subcontractor to undercut known bids submitted to the prime contractor to procure a job.

"Bid shopping" means the use of a low bid already received by the prime contractor to pressure other subcontractors into submitting even lower bids.

~~[(h)]~~ (i) The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event all bids exceed available funds as certified by the appropriate fiscal officer, the head of the purchasing agency responsible for the procurement in question is authorized in situations where time or economic considerations preclude resolicitation of work of a reduced scope to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsible and responsive bidder, in order to bring the bid within the amount of available funds.

~~[(i)]~~ (j) When it is not practicable to initially prepare a purchase description to support an award based on price, an invitation for bids, which requests the submission of unpriced offers to be

followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation, may be used. If a multi-step sealed bidding process is used, the notice and the invitation for bids shall describe each step to be used in soliciting, evaluating, and selecting unpriced offers."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on January 7, 2059.

**Report Title:**

Procurement; Competitive Sealed Bidding; Subcontractor; Public Works Construction Project; Bid Shopping; Bid Peddling

**Description:**

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 1/7/2059. (HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



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](mailto:ecah@ecahi.com)



March 20, 2017

To: House Committee on Labor & Public Employment  
Honorable Chairperson Arron Johnason & Vice Chairman Daniel Holt  
  
House Committee on Economic Development & Business  
Honorable Chairperson Mark Nakashima & Vice Chairperson Jarrett Keohokalole

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

Subject: SB 1070, SD2 Relating to Procurement

Notice of Hearing

Date: Tuesday, February 21, 2017  
Time: 10:30 AM  
Place: Conference Room 309  
State Capitol  
415 South Beretania Street

Dear Chairs Johanson, Nakashima 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 **opposes** the intent and purpose of SB 1070, SD2 as written that prohibits bid shopping and bid peddling for the competitive sealed bidding process. While we are opposed to bid shopping and bid peddling in concept, we don't feel that this bill properly addresses an equitable resolution for all parties and is not in the best interest of the State. This issue has been a contentious one between the proponents and opponents over the years. The bottom line is, the requirement for the bidding contractor to submit a listing of subcontractors is for the protection and integrity of the competitive sealed bid system and the general fairness among all parties including the procuring agency and the taxpayers.

Allowing an additional two (2) hours after the closing of the invitation for bids would only allow for bid shopping and bid peddling to occur. The additional two hours is only a compromise to the time allowed after bids are due in previous bills but doesn't provide for a resolution to the problem of bid shopping and bid peddling, it can occur if any time after bids are due is allowed.

The reasons for the substitution of a listed subcontractor in Section 2, h are already provided for in current rules therefore this section is not necessary.



Based on the above, ECAH **opposes** the passage of SB 1070, SD2 until a more equitable law is proposed and encourages this committee to kill this bill.

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

**PRESENTATION OF THE  
CONTRACTORS LICENSE BOARD**

TO THE HOUSE COMMITTEE ON  
LABOR & PUBLIC EMPLOYMENT

AND

TO THE HOUSE COMMITTEE ON  
ECONOMIC DEVELOPMENT & BUSINESS

TWENTY-NINTH LEGISLATURE  
Regular Session of 2017

Tuesday, March 21, 2017  
10:30 a.m.

**TESTIMONY ON SENATE BILL NO. 1070, S.D. 2, RELATING TO PROCUREMENT.**

TO THE HONORABLE AARON LING JOHANSON, CHAIR,  
TO THE HONORABLE MARK M. NAKASHIMA, 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. 2, which proposes to prohibit bid shopping and bid peddling for the competitive sealed bidding process.

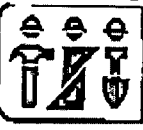
This bill proposes to prohibit the prime contractor from substituting a listed subcontractor; and allows substitution of a listed subcontractor by the prime contractor for various reasons, including but not limited to, the inability of the listed subcontractor to perform the requirements of the proposed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

Because 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, DCCA is working with the Senate Committee on Government Operations on an amendment to address its concerns.

Thank you for the opportunity to provide comments on Senate Bill No. 1070,  
S.D. 2.

	<b>RALPH S. INOUE CO LTD</b> <b>GENERAL CONTRACTOR</b>	500 Alakawa St., #220E Honolulu, Hawaii 96817	T: 808.839.9002 F: 808.833.5971	License No. ABC-457 Founded in 1962
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Via E-mail: [LABTestimony@capitol.hawaii.gov](mailto:LABTestimony@capitol.hawaii.gov)  
Facsimile: 808-568-6189

March 21, 2017

TO: HONORABLE AARON LING JOHANSON, CHAIR, HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT KEOHOKALOLE, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS

SUBJECT: **SUPPORT OF S.B. 1070, SD2 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 1/7/2059. (SD2)

HEARING

DATE: March 21, 2017  
TIME: 10:30 a.m.  
PLACE: Capitol Room 309

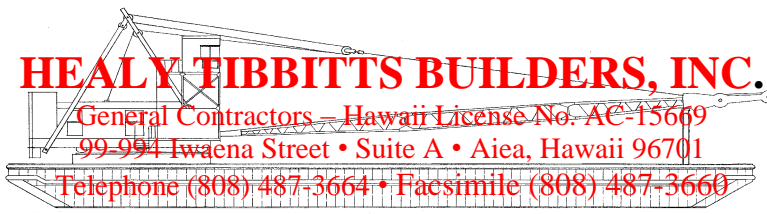
Dear Chair Johanson, Chair Nakashima, Vice Chair Holt, Vice Chair Keohokalole and Members of the Committees,

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, SD2 Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by allowing bidders two hours after bid closing to clarify and correct the list of subcontractors or joint contractors working on the project to the agency. Under this proposed change, the procurement officer would 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 the opportunity to ensure that all subcontractors who have submitted bids to the general contractor have met all of the requirements to perform work on state and county projects, including meeting all licensing, bonding and insurance requirements, as applicable. The additional time is necessary because in most cases the general contractor does not receive bid prices from the various subcontractors until shortly before the bid must be submitted to the state agency. This will reduce the likelihood of errors and result in reducing the number of bid protests which often delay public works projects and in some cases increase the cost of public works project for the state. Further the bill includes a provision that prohibits bid shopping and bid peddling and allows one who suspects such activity is occurring to make a claim against such activity.

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

RSI **supports** S.B. 1070, SD2 and recommends its passage.



March 20, 2017

Sent Via E-mail to: [LABTestimony@capitol.hawaii.gov](mailto:LABTestimony@capitol.hawaii.gov)

TO: HONORABLE AARON LING JOHANSON, CHAIR, HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

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#### HEARING

DATE: March 21, 2017

TIME: 10:30 a.m.

PLACE: Capitol Room 309

Dear Chair Johanson, Chair Nakashima, Vice Chair Holt, Vice Chair Keohokalole and Members of the Committees:

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

Healy Tibbitts Builders, Inc. **supports** the passage of S.B. 1070, SD2 Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by allowing bidders two hours after bid closing to clarify and correct the list of subcontractors or joint contractors working on the project to the agency. Under this proposed change, the procurement officer would 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 the opportunity to ensure that all subcontractors who have submitted bids to the general contractor have met all of the requirements to perform work on state and county projects, including meeting all licensing, bonding and insurance requirements, as applicable. The additional time is necessary because in most cases the general contractor does not receive bid prices from the various subcontractors until shortly before the bid

**Healy Tibbitts Builders, Inc.**

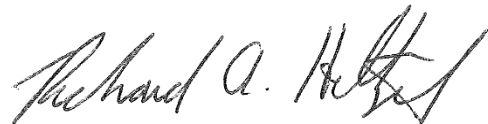
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We believe that this proposed amendment will result in more complete and accurate bid submittals and reduce the number of potential bid protests.

Healy Tibbitts Builders, Inc. **supports** S.B. 1070, SD2 and recommends its passage.

Very truly yours,  
Healy Tibbitts Builders, Inc.

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

Richard A. Heltzel  
President



Via E-mail: [LABTestimony@capitol.hawaii.gov](mailto:LABTestimony@capitol.hawaii.gov)

Facsimile: 808-586-6189

March 21, 2017

TO: HONORABLE AARON LING JOHANSON, CHAIR, HONORABLE DANIEL HOLT,  
VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND  
PUBLIC EMPLOYMENT

HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT  
KEOHOKALOLE, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON  
ECONOMIC DEVELOPMENT AND BUSINESS

SUBJECT: **SUPPORT OF S.B. 1070, SD2 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 1/7/2059. (SD2)

HEARING

DATE: March 21, 2017  
TIME: 10:30 a.m.  
PLACE: Capitol Room 309

Dear Chair Johanson, Chair Nakashima, Vice Chair Holt, Vice Chair Keohokalole and Members of  
the Committees,

LYZ, Inc. **supports** the passage of S.B. 1070, SD2 Relating to Procurement, which would amend  
the current procurement subcontractor listing requirement under Section 103D-302, HRS by allowing  
bidders two hours after bid closing to clarify and correct the list of subcontractors or joint contractors  
working on the project to the agency. Under this proposed change, the procurement officer would  
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 the opportunity to ensure that all subcontractors who  
have submitted bids to the general contractor have met all of the requirements to perform work on  
state and county projects, including meeting all licensing, bonding and insurance requirements, as  
applicable. The additional time is necessary because in most cases the general contractor does not  
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the state agency. This will reduce the likelihood of errors and result in reducing the number of bid  
protests which often delay public works projects and in some cases increase the cost of public works  
project for the state. Further the bill includes a provision that prohibits bid shopping and bid peddling  
and allows one who suspects such activity is occurring to make a claim against such activity.

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

LYZ, Inc. **supports** S.B. 1070, SD2 and recommends its passage.

James N. Kurita  
Vice President / Chief Operating Officer



# JAYAR CONSTRUCTION, INC.

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

March 20, 2017

To: HONORABLE AARON LING JOHANSON, CHAIR, HONORABLE DANIEL HOLT, VICE CHAIR  
AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT KEOHOKALO, VICE  
CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT AND  
BUSINESS

SUBJECT: **SUPPORT OF S.B. 1070, SD2 RELATING TO PROCUREMENT.** Provides a bidder of a public works construction project two hours after the closing of bids to clarify and correct certain information regarding subcontractor listings. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Effective 1/7/2009. (SD2)

Hearing Date: March 21, 2017  
Hearing Time: 10:30 A.M.  
Hearing Place: Capitol Room 309

Dear Chair Johanson, Chair Nakashima, Vice Chair Holt, Vice Chair Keohokalole 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, SD2, Relating to Procurement, which would amend the current subcontractor listing requirement by allowing bidders two hours after bid closing to clarify and correct the list of subcontractors or joint contractors on their submitted bid. Under this proposed change the procurement officer would close the bidding in the usual manner, but would not open the bids until after the complete subcontractor lists have been submitted.

The proposed change will permit the bidders the opportunity to ensure that all subcontractors who have submitted bids have met all of the licensing, bonding and insurance requirements to perform work on the project. The additional time is necessary because in most cases the general contractor does not receive the subcontractors bid prices until shortly before the bid must be submitted to the agency. This added time will reduce the likelihood of errors and result in reducing the number of bid protests which often delay public works projects and often increase the cost of public works project for the state. Further the bill includes a provision that prohibits bid shopping and bid peddling and allows anyone who suspects such activity to make a claim.

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

**Jayar supports S.B. 1070, SD2 and recommends its passage.**

Sincerely,

  
Stephen Yoshida,  
CFO and Human Resource Manager





**RALPH S. INOUE CO LTD**  
**GENERAL CONTRACTOR**

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

T: 808.839.9002  
F: 808.833.5971

License No. ABC-457  
Founded in 1962

Via E-mail: [LABTestimony@capitol.hawaii.gov](mailto:LABTestimony@capitol.hawaii.gov)  
Facsimile: 808-586-6189

March 21, 2017

TO: HONORABLE AARON LING JOHANSON, CHAIR, HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT KEOHOKALOLE, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS

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#### HEARING

DATE: March 21, 2017  
TIME: 10:30 a.m.  
PLACE: Capitol Room 309

Dear Chair Johanson, Chair Nakashima, Vice Chair Holt, Vice Chair Keohokalole 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, SD2 Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by allowing bidders two hours after bid closing to clarify and correct the list of subcontractors or joint contractors working on the project to the agency. Under this proposed change, the procurement officer would 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 the opportunity to ensure that all subcontractors who have submitted bids to the general contractor have met all of the requirements to perform work on state and county projects, including meeting all licensing, bonding and insurance requirements, as applicable. The additional time is necessary because in most cases the general contractor does not receive bid prices from the various subcontractors until shortly before the bid must be submitted to the state agency. This will reduce the likelihood of errors and result in reducing the number of bid protests which often delay public works projects and in some cases increase the cost of public works project for the state. Further the bill includes a provision that prohibits bid shopping and bid peddling and allows one who suspects such activity is occurring to make a claim against such activity.

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

RSI supports S.B. 1070, SD2 and recommends its passage.



**Alan Shintani Inc.**  
GENERAL CONTRACTOR BC 13068

March 21, 2017

TO: HONORABLE AARON LING JOHANSON, CHAIR, HONORABLE DANIEL HOLT,  
VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND  
PUBLIC EMPLOYMENT

HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT  
KEOHOKALO, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON  
ECONOMIC DEVELOPMENT AND BUSINESS

SUBJECT: **SUPPORT OF S.B. 1070, SD2 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 1/7/2059. (SD2)

HEARING

DATE: March 21, 2017  
TIME: 10:30 a.m.  
PLACE: Capitol Room 309

Dear Chair Johanson, Chair Nakashima, Vice Chair Holt, Vice Chair Keohokalole and Members of the  
Committees,

Alan Shintani, Inc. **supports** the passage of S.B. 1070, SD2 Relating to Procurement, which would amend the  
current procurement subcontractor listing requirement under Section 103D-302, HRS by allowing bidders two  
hours after bid closing to clarify and correct the list of subcontractors or joint contractors working on the  
project to the agency. Under this proposed change, the procurement officer would close the bidding in the  
usual manner, but would not open the bids until after the subcontractor lists have been submitted.

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and in some cases, increase the cost of public works project for the state. Further the bill includes a provision  
that prohibits bid shopping and bid peddling and allows one who suspects such activity is occurring to make a  
claim against such activity.

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

Alan Shintani, Inc. **supports** S.B. 1070, SD2 and recommends its passage.

Alan Shintani  
President

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 20, 2017 1:32 PM  
**To:** LABtestimony  
**Cc:** stabfund@gmail.com  
**Subject:** Submitted testimony for SB1070 on Mar 21, 2017 10:30AM

**SB1070**

Submitted on: 3/20/2017

Testimony for LAB/EDB on Mar 21, 2017 10:30AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
A. Makana Paris	Hawaii Iron Workers Stabilization Fund	Oppose	Yes

Comments: Oppose with comments.

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

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

# **SB 1070, SD2**

## **Late Testimony**

HEARING BEFORE THE HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

AND

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS

Senate Bill 1070, SD2  
Relating To Procurement

Chairs Johanson and Nakashima and Members of the Committees:

Thank you for this opportunity to submit testimony on behalf of the Painting Industry of Hawaii Labor Management Cooperation Trust Fund, Hawaii Tapers Market Recovery Trust Fund, Hawaii Glaziers, Architectural Metal Glassworkers Local Union 1889 AFL-CIO Stabilization Trust Fund, and Carpet, Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund in **opposition** to Senate Bill 1070. This measure allows a bidder on a public construction project up to two hours after the close of bids to submit its list of subcontractors and creates a legal cause of action for bid shopping by an aggrieved subcontractor.

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

This bill also allows the general contractor two hours after the close of bids to name its subcontractors. This change to the procurement code gives the general contractor more than enough time to bid shop subcontractors who have already submitted their best prices to the general contractor. This unethical practice undermines public confidence in the procurement system and promotes substandard work and/or delays.

The State Procurement Task Force convened pursuant to Senate Concurrent Resolution 92, S.D. 2 (2013) studied data relating to bid protests filed with respect to construction contracts over a multi-year period and concluded that bid protests related to subcontractor listing issues are simply not a statistically significant problem. The Task Force decided not to recommend any changes to the State's procurement law with respect to subcontractor listing. A copy of the report can be downloaded at: <https://ags.hawaii.gov/wp-content/uploads/2012/09/ProcurementTaskForceReportLS2013.pdf>.

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



**LATE**

**LATE**

**LATE**

**S & M SAKAMOTO, INC.**  
GENERAL CONTRACTORS

Via E-mail: [LABTestimony@capitol.hawaii.gov](mailto:LABTestimony@capitol.hawaii.gov)  
Facsimile: 808-586-6189

March 21, 2017

TO: HONORABLE AARON LING JOHANSON, CHAIR, HONORABLE DANIEL HOLT, VICE  
CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND PUBLIC  
EMPLOYMENT

HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT KEOHOKALO, VICE  
CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT  
AND BUSINESS

SUBJECT: **SUPPORT OF S.B. 1070, SD2 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 1/7/2059. (SD2)

HEARING

DATE: March 21, 2017  
TIME: 10:30 a.m.  
PLACE: Capitol Room 309

Dear Chair Johanson, Chair Nakashima, Vice Chair Holt, Vice Chair Keohokalole and Members of the  
Committees,

S & M Sakamoto, Inc. supports the passage of S.B. 1070, SD2 Relating to Procurement, which would amend  
the current procurement subcontractor listing requirement under Section 103D-302, HRS by allowing bidders  
two hours after bid closing to clarify and correct the list of subcontractors or joint contractors working on the  
project to the agency. Under this proposed change, the procurement officer would 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 the opportunity to ensure that all subcontractors who have  
submitted bids to the general contractor have met all of the requirements to perform work on state and county  
projects, including meeting all licensing, bonding and insurance requirements, as applicable. The additional  
time is necessary because in most cases the general contractor does not receive bid prices from the various  
subcontractors until shortly before the bid must be submitted to the state agency. This will reduce the likelihood  
of errors and result in reducing the number of bid protests which often delay public works projects and in some  
cases increase the cost of public works project for the state. Further the bill includes a provision that prohibits  
bid shopping and bid peddling and allows one who suspects such activity is occurring to make a claim against  
such activity.

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

S & M Sakamoto, Inc. supports S.B. 1070, SD2 and recommends its passage.

Very truly yours,

Gerard Sakamoto  
Chairman of the Board



**LATE LATE**

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

**LATE**

Via E-mail: [LABTestimony@capitol.hawaii.gov](mailto:LABTestimony@capitol.hawaii.gov)  
Facsimile: 808-586-6189

March 20, 2017

TO: HONORABLE AARON LING JOHANSON, CHAIR, HONORABLE DANIEL HOLT,  
VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND  
PUBLIC EMPLOYMENT

HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT  
KEOHOKALOLE, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE  
ON ECONOMIC DEVELOPMENT AND BUSINESS

SUBJECT: **SUPPORT OF S.B. 1070, SD2 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  
1/7/2059. (SD2)

HEARING

DATE: March 21, 2017  
TIME: 10:30 a.m.  
PLACE: Capitol Room 309

Dear Chair Johanson, Chair Nakashima, Vice Chair Holt, Vice Chair Keohokalole and Members of  
the Committees,

**Hawaiian Dredging Construction Company, Inc. supports** the passage of S.B. 1070,  
SD2 Relating to Procurement, which would amend the current procurement subcontractor  
listing requirement under Section 103D-302, HRS by allowing bidders two hours after bid  
closing to clarify and correct the list of subcontractors or joint contractors working on the  
project to the agency. Under this proposed change, the procurement officer would 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 the opportunity to ensure that all  
subcontractors who have submitted bids to the general contractor have met all of the  
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reduce the likelihood of errors and result in reducing the number of bid protests which  
often delay public works projects and in some cases increase the cost of public works  
project for the state. Further the bill includes a provision that prohibits bid shopping and bid  
peddling and allows one who suspects such activity is occurring to make a claim against  
such activity.

Support of SB 107, SD2 Relating to Procurement

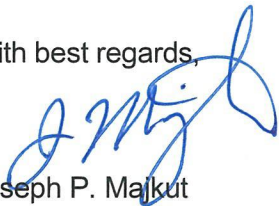
March 20, 2017

Page 2

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

**Hawaiian Dredging Construction Company, Inc. supports S.B. 1070, SD2 and recommends its passage.**

With best regards,



Joseph P. Majkut

President

Hawaiian Dredging Construction Company, Inc.







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## STEEL FABRICATORS AND ERECTORS OF HAWAII

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P.O. Box 30062 • Honolulu, Hawaii 96820-0062

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March 20, 2017

Re: SB1070, SD1, Relating to Procurement

**LATE**

**LATE**

Hearing – March 21, 2017, at 10:30 am

Conference Room 309

Aaron Johanson, Chair – LAB

Mark Nakashima, Chair – EDB

**LATE**

Chairs Johanson and Nakashima and Members:

Thank you for the opportunity to testify on this measure. The Steel Fabricators and Erectors of Hawaii represent all companies in this business that are signatories to unions in this business.

The long-standing practice in the contracting business is for subcontractors to submit their offers to the general contractors at least 24 hours before the general contractors submit their formal bids to the contracting agencies. There is more than ample time for the general contractors to finalize their bids within this 24 hour period. General contractors do not need additional time to finalize their bids.

Rupert Chun, President



**HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST**  
650 Iwilei Road, Suite 285 · Honolulu, HI 96817 · Phone: 808-845-3238 · Fax: 808-845-8300

**LATE**

**TESTIMONY OF HAWAII LECET  
CLYDE T. HAYASHI - DIRECTOR**

**LATE**

HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
Rep. Aaron Ling Johanson, Chair  
Rep. Daniel Holt, Vice Chair

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS  
Rep. Mark M. Nakashima, Chair  
Rep. Jarrett Keohokalole, Vice Chair

**LATE**

NOTICE OF HEARING

DATE: Tuesday, March 21, 2017  
TIME: 10:30 AM  
PLACE: Conference Room 309

**TESTIMONY ON SENATE BILL NO. 1070 SD2, RELATING TO PROCUREMENT.**

ALOHA COMMITTEE CHAIR JOHANSON, COMMITTEE VICE CHAIR HOLT, AND HOUSE MEMBERS OF THE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT:

ALOHA COMMITTEE CHAIR NAKASHIMA, COMMITTEE VICE CHAIR KEOHOKALOLE, AND HOUSE MEMBERS ON THE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS:

My name is Clyde T. Hayashi, and I am the Director of Hawaii LECET. Hawaii LECET is a labor-management partnership between the Hawaii Laborers Union, Local 368, and its unionized contractors.

Mahalo for the opportunity to testify **supporting the intent of Senate Bill No. 1070 SD2 with a few friendly amendments.** This bill proposes to provide a bidder of a public works construction project with two hours after the closing of bids to clarify and correct certain information regarding subcontractors. It also prohibits bid shopping and bid peddling for the competitive sealed bidding process.

Hawaii LECET is unsure how 2 hours to clarify or correct a subcontractors list will be implemented. **It maybe more simplistic to just allow the bidder 2 hours after bids are due to submit their subcontractors list. If the bidder fails to submit its subcontractors list within 2 hours, that bid would be considered unresponsive.**

We would also like to amend this bill by adding another item (4) to read...

**(4) The listed subcontractor is unable or refuses to meet the contractual requirements or agreements of the bidder”.**

This will allow a bidder bound by contract (ie: a collective bargaining agreement, etc...), to replace an inadvertently listed non-signatory subcontractor with a signatory subcontractor who can meet the labor requirements or agreements of the bidder.

For these reasons, we **support the intent of Senate Bill No. 1070 SD2 with a few friendly amendments.**

**LATE (or updated) TESTIMONY**

for Measure: SB1070, SD2

<b>Committee</b>	LAB / EDB
<b>Committee Referrals</b>	LAB / EDB
<b>Date of Hearing</b>	03- <del>16</del> <sup>21</sup> -17
<b>Organization</b>	Sheet Metal Contractors Assn
<b>Name of Testifier</b>	Blake Parson
<b>Job Title of Testifier</b>	Executive Director
<b>Position – Circle One</b>	Support / <u>Oppose</u> / Comments
<b>Category – Circle One</b>	Fed Govt. / State Govt. / County Govt. / <u>Industry</u> / Private Citizen
<b>Notes:</b>	will send in email.