



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Ways and Means
February 28, 2018 at 11:00 a.m.

By
Jan Gouveia
Vice President for Administration
University of Hawai'i

SB 2600 SD 1 – RELATING TO PROCUREMENT

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee:

Thank you for the opportunity to present testimony on SB 2600 SD1 – Relating to Procurement. The University of Hawai'i ("University") supports this measure but requests amendments to make implementation less complicated and reduce the risk of protests.

SB 2600 SD1 accurately highlights the problems and costs borne by state agencies that are associated with the provision in the Hawai'i Procurement Code that requires a listing of all subcontractors or joint contractors as part of a bid proposal in competitive sealed bids for construction. Such problems and costs are in the form of protests and/or the lost opportunity to award to the otherwise lowest bidder. Presumably, this is why the federal government does not require such a listing.

Generally speaking, general contractors desire to have time after a bid is submitted to finalize the subcontractor/joint contractor list; on the other hand, subcontractors believe this time will be used by the general contractor to bid-shop between subcontractors. This has been a long standing dispute that leaves the procuring agency "holding the bag" for any costs associated with errors and/or protests arising out of a subcontractor list submitted at the time of bid proposal. Thus, many lawmakers have questioned the value of requiring a subcontractor listing at the time of proposal – which is consistent with recent testimony by the Hawai'i State Procurement Office that promotes the elimination of any requirement for the listing of subcontractors at the time of proposal. However, there is concern that such a drastic change in the law would have unintended negative impact on subcontractors.

To assist the Legislature with evaluating the impact of eliminating or reducing the subcontractor listing requirement, this measure seeks to authorize the University of Hawai'i to conduct a 2-year pilot project that (1) only requires a subcontractor/joint-contractor listing at the time of proposal for those construction projects with a cost estimate greater than \$3 million, and (2) for those projects with a cost estimate less than \$3 million, only requires a listing of subcontractors/joint-contractors in the following trades: electrical, plumbing, asbestos, elevators, and boilermakers.

The University desires to participate in the pilot program to determine any impact or hardships caused by the elimination of the subcontractor listing requirement. However, to assist with the administration and implementation of the project, the University requests that the listing requirements for five (5) specific trades in projects that are estimated to be less than \$3 million be removed altogether. Based on our experience, these five trades are the primary source of almost all protests under the current law, which effectively neutralizes the significance of the pilot program. Furthermore, changes to the subcontractor listing requirements for projects that are less than \$3 million will only add to the administrative review process and will result in the introduction of new grounds for protests based on the essential features of the new subcontractor listing requirements.

The University proposes to replace Section 2 (a) of the measure in its entirety with the following:

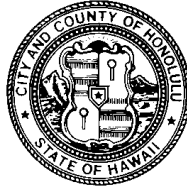
SECTION 2. (a) Notwithstanding anything in the law to the contrary, including but not limited to Chapter 103D, Hawaii Revised Statutes, there is established the subcontractor listing pilot program to be conducted by the University of Hawaii. Under this program, the University of Hawaii shall not require a listing of joint contractors and/or subcontractors to be included in competitive sealed bids for construction where the estimated contract value is less than \$3,000,000.

For invitations for competitive sealed bids for construction where the estimated contract value is \$3,000,000 and above, the University will continue to require a listing of joint contractors and/or subcontractors be included with the bids as presently required under Chapter 103D, Hawaii Revised Statutes.

Based on the foregoing, the University supports SB 2600 SD1 but requests the proposed amendments to make implementation of the bill less complicated and reduce the potential for further protests.

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
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NELSON H. KOYANAGI, JR.
DIRECTOR

MANUEL T. VALBUENA
DEPUTY DIRECTOR

TESTIMONY OF NELSON H. KOYANAGI, JR.
DIRECTOR OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
FEBRUARY 28, 2018, CONFERENCE ROOM 211

Senate Bill SB 2600, "Relating To Procurement"

Position: IN SUPPORT

TO: The Honorable Senator Donovan M. Dela Cruz, Chair
and Members of the Committee on Ways and Means

The Department of Budget and Fiscal Services (BFS) of the City and County of Honolulu **strongly supports** Senate Bill No. SB 2600, SD1 Relating To Procurement.

BFS strongly supports this bill that establishes a pilot project to be conducted by the University of Hawaii for contractor sublisting to test possible changes to the State's procurement code on a small scale.

Subcontractor listing and licensing issues have caused protests and award delays, which in turn affects funds being lapsed and project start dates. Requiring contractors to list joint subcontractors and/or subcontractors to the "five (5) sacred trades" (under \$3 million) will still maintain controls of the procurement, while allowing contractors to finalize their subcontractor list in a timely manner which will minimize delays and lapsing of funds. BFS believes that the pilot project established under SB2600, SD1 will reflect this result.

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 bfs purchasing@honolulu.gov.

SB-2600-SD-1

Submitted on: 2/24/2018 10:11:35 AM

Testimony for WAM on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Kono	Testifying for Hawaii Wall & Ceiling Industry Association	Oppose	No

Comments:

The members of the Hawaii Wall & Ceiling Industry Oppose SB2600,SD1. Our members oppose this bill because dropping the requirement for General Contractors to list their subcontractors benefits no one but the General Contractors. This will allow them to peddle bids to get even lower bids to benefit their bottom line. The State and City receive no benefit from this. There are a lot of subcontractors who would be affected by this and all they want is a level playing field. Thank you for considering our position on this bill.

SAH - Subcontractors Association of Hawaii

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

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

February 28, 2018

Testimony To: Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair

Presented By: Tim Lyons, President

Subject: S.B. 2600, SD 1 – RELATING TO PROCUREMENT

Chair Dela Cruz 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

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

There are many statements in Section 1 of the bill that are misstatements of fact and contradictions. As just one example, it talks about bid protests causing delays and increased project costs yet the testimony of our own Comptroller on this subject just last session states that “[T]he public perceives that protests are a large problem in the procurement process; however, the statistics do not support this”. (Testimony 3/30/17 to JDL, WAM on HB 1229, HD1, SD 1.) We know of no objective, unbiased updated data that would allow anyone to come to a contrary conclusion.

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. That Task Force summarized that an average of 6.3% of all construction projects were protested in FY 13 and FY 14 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 protest for bids was a result of the subcontractor listing requirement however it goes on further to say the “...after considerable discussion analysis of 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”.

Section 1 of the bill glosses over those findings and ignores that. While some of the protests were over subcontractor listing, it was also over issues of missing or unlicensed subcontractors. So in other words, where a general contractor forgot to list a sub or listed the 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. At least the bill acknowledges that in some cases the general contractor did not perform their due diligence which we believe to be the real problem.

We also do not think that the purpose section of this bill fairly describes the listing requirement and difficulties noting 100 different specialties. There should be no confusion between listing a landscape contractor and a plumber or a roofing contractor and a flooring contractor. 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 the occasion to shop the bids on most everyday jobs since most jobs are under \$3,000,000. 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.

This bill boasts about the federal system which we believe is not even relevant since there is no contractor licensing but please note 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 experience constant bid shopping and chiseling by general contractors they refuse to participate in that process. We would not like to see the same thing to happen to state and county contracts and experience any lessening of the competition.

Changes Needed

We do not think this bill is needed at all however if the Committee is intent on passing it PLEASE consider the following:

1. This supposedly is a pilot project. Who is going to report on the findings? No one in this bill is an objective party. Not the generals, not the subcontractors and certainly not the University of Hawaii. A third party must be designated.
2. This experiment has been tried before AND with UH. It was a failure! They experienced a lessening of competition. Subcontractors refused to bid to generals on certain UH jobs because they knew they would get shopped or chiseled. We see no reason to do it again but if you must please limit it to one year. The subs that normally bid here are going to lose job opportunities; let's minimize the impact as much as possible. They can find someplace else to bid for a year and survive.
3. Lower the threshold from the proposed \$3,000,000 to \$1,000,000. Many UH jobs come in under \$3,000,000. This will help to limit the application but still provide a pilot program.
4. Get rid of the "sacred trade" qualifier. It has no basis when it comes to sublisting or not. There is no logic to listing some and not others. As the bill professes, there are over 100 specialities...why pick only these five? There is no reason.

As written and without the changes the bill is disastrous for subcontractors, the state procurement process and the taxpayers. With the changes it is still a bad bill but the pilot can go on with only minimal negative effects.

Lastly, we would ask that you keep in mind that the root of the problem is that generals want badly to entirely eliminate the subcontractor listing law. We have tried to address their problems only to be rebuked with one goal in mind...elimination. This is a step towards that goal.

Thank you.

SB-2600-SD-1

Submitted on: 2/22/2018 7:48:44 AM

Testimony for WAM on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Arnold	Testifying for Ironworkers Stabilization	Oppose	No

Comments:

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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 28, 2018

TO: HONORABLE DONOVAN DELA CRUZ, CHAIR, HONORABLE GIL KEITH AGARAN, VICE CHAIR, SENATE COMMITTEE ON WAYS AND MEANS

SUBJECT: **STRONG SUPPORT OF S.B. 2600, SD1, RELATING TO PROCUREMENT.** Establishes the subcontractor listing pilot program to be conducted by the University of Hawaii. Requires a report to the legislature. Repeals June 30, 2020. (SD1)

PUBLIC DECISION MAKING

DATE: Wednesday, February 28, 2018
TIME: 11:00 AM
PLACE: Capitol Room 211

Dear Chair Donovan Dela Cruz, Vice Chair Gil Keith Agaran and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The 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.

The GCA is in **strong support** of S.B. 2600, SD1, Relating to Procurement. SB 2600, SD1, proposes a two year pilot project with the University of Hawaii – whereby parties will have the opportunity to test the limited or no subcontractor listing practice for projects under \$3 million dollars. For projects over \$3 million, the subcontractor listing requirements would remain the same – in other words it would be status quo for competitive sealed bidding for projects with an estimated value over \$3 million. However, for projects under \$3 million the subcontractor listing mandates would not be required except for disclosure of the trades in electrical, plumbing, asbestos, elevators and boilermaker construction contracts. This pilot project would allow a limited subcontractor listing requirement for projects under \$3 million, and could likely result in less bid protests and more efficient delivery of projects. Information gathered from this pilot project will lead to more education and information for others interested in how limiting subcontractor licensing requirements could make the procurement of public works projects more efficient. GCA remains open to considering any amendments that the University of Hawaii may have with regard to making such a pilot program easier to administer.

S.B. 2600, SD1 and the original version is modeled after Washington Procurement Code

The dollar threshold and the limited listing of certain trades are modeled after Washington State's law which has been in place since 1993. However, Washington's state's law limits subcontractor listing requirements to projects over \$1 million dollars, and additionally allows submission of the list one hour after the bid closes, and also only requires three trades to be listed

electrical, plumbing and heat, ventilation and air conditioning (HVAC). See Washington State Statute Revised Code of Washington 39.30.060 attached. Upon speaking the Washington State sister chapter in Seattle, Washington they verified that the Code has continued to work for them and bid protests related to subcontractor listing has not been an issue of concern.

The GCA strongly supports this bill because the bid protests due to the subcontractor listing requirements continue to increase the cost of public works construction and delay the delivery of projects. Additionally, the mandated subcontractor listing requirement is not consistent with the *American Bar Association Model Procurement Code* (ABA Model Procurement Code), which Hawaii's Procurement Code is modeled after. Furthermore the federal government does not require subcontractor listing on any of their projects thus protests on this issue do not exist. While we understand the concern with regard to bid shopping and bid peddling, we have grave concerns about whether the original intent of the subcontractor listing law is still applicable in its entirety.

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 errors in bids that either fail to list a subcontractor or inadvertently commits a listing error in the haste to submit a bid by the deadline. 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 a higher bidder could replace the apparent lowest bidder from being awarded the contract. These protests have historically resulted in delays in contract awards and in the event the low bidder is disqualified – taxpayers are burdened with additional costs that are rarely accounted for.

Under the current law, Section 103D-302(b), HRS requires a contractor bidding on public works construction to list subcontractors and joint contractors and their scope of work to be employed on all public works projects, unless the prime contractor has the required specialty license or will do the work themselves. This bill proposes to limit which projects the subcontractor listing applies to based on the cost of the project. This measure does not preclude a state agency from requiring a list of subcontractors to be submitted prior to start of construction which would provide them with the information necessary to know who would be working on the project.

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

The subcontractor listing law has resulted in increased cost for taxpayers, delay in delivery of much needed projects, and the potential of lapsing funds for public works projects. We appreciate this Committee's consideration of changing the subcontractor listing requirement as applied to certain dollar threshold. Thank you for this opportunity to **support** this bill and we respectfully request the Committee to move this measure forward.



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PH: (808) 597-1216

GREGG S. SERIKAKU
EXECUTIVE DIRECTOR

Via Email

February 23, 2018

Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice-Chair
Senate Committee on Ways and Means
The Twenty-Ninth Legislature, Regular Session of 2018

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

SUBJECT: SB2600 SD1 Relating to Procurement

My name is Gregg Serikaku. I am the Executive Director of the Plumbing and Mechanical Contractors Association of Hawaii.

The Association for which I speak is **strongly opposed** to SB2600 SD1.

This bill creates a pilot program for University of Hawaii construction projects that increases the threshold for contracts that require the subcontractor listing and scope of work to projects with an estimated contract value greater than \$3,000,000, and also specifies that certain designated trades shall be listed on all contracts regardless of estimated value.

There are several concerns that we have:

1. The review on the pilot program should be conducted by an independent third party to insure that only unbiased data is collected and analyzed.
2. How will the effectiveness of the pilot program be determined? There should be an open and independent review of the pros and cons of the pilot program so that the overall impact can be fairly assessed.
3. Why is there a need for any program to determine whether the validity of the sublisting requirement, when this issue has already been addressed by the procurement task force formed in 2013 and whose report was issued in 2017? This report is based on 3 years of data collected by the procurement task force to determine the true extent of such protests and whether the protests were frivolous in nature or justified. The task force report shows that less than 4% of all state/county projects were protested, and an even smaller percentage (1%) were protests based on the sublisting requirement. Furthermore, the data also showed that the increase in costs due to non-award to the low bidder was less than 1/2%. These results clearly show that the number and costs of protests are minimal, and in most cases responsible prime bidders were able to correctly follow the procurement rules and subcontractor listing requirements currently in place.

The proponents of this bill continue to create disharmony and distrust between general contractors and subcontractors and the trades they represent by proposing rules that degrade the integrity of the procurement process, increase bid challenges, incite bid shopping, and reduce the number of competitive bids being submitted on public works projects.

In summary, there is no justification to dilute the sublisting requirement by increasing the listing threshold. The proposed thresholds represent sizable contracts for many contractors, especially for the small and medium sized companies which form the backbone of the local construction industry, and these contractors should not be discounted and exposed to bid shopping.

We therefore respectfully urge the committee to hold this bill.

Respectfully yours,

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

Gregg S. Serikaku
Executive Director



**Testimony to the Senate Committee on Ways & Means
Wednesday, February 28, 2018
11:00 am
State Capitol, Room 211**

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P 808.847.4666

RE: SB 2600 SD1 – Relating to Procurement

Chair Dela Cruz, Vice-Chair Keith-Agaran, & members of the Committee:

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

BIA-Hawaii is in support of S.B. 2600 SD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS. S.B. 2600 would still require the subcontractor listing to apply for all public works project over \$5,000,000. However, for bids less than \$5,000,000 no subcontractor listing would be required except for the disclosure of any subcontractors on the project in the trades of electrical, plumbing, asbestos, elevators and boilermaker for construction contracts.

Under current law Section 103D-302(b), HRS requires the bidding contractor to all subcontractors and joint contractors and their scope of work to be employed on all project unless the prime contractor has the required specialty license or will do the work themselves. The subcontractor listing requirement has become a way for bidders to attack the responsiveness of a proposal, resulting in awards to non-low bidders, increased costs to the state and taxpayers, and delayed projects due to a technicality in the submitted subcontractor list. As a result, not only does the lowest bidder and their listed subcontractors get disqualified from the project, but the state could end up paying more for the project. This bill proposes to limit which projects the subcontractor listing applies to based on the cost of the project, which will in turn limit these types of challenges.

We appreciate the opportunity to express our views on this matter.



general contractor license #ABC 21576

February 26, 2018

TO: HONORABLE DONOVAN DELA CRUZ, HONORABLE GIL KEITH AGARAN,
AND MEMBERS OF THE SENATE COMMITTEE ON WAYS AND MEANS

SUBJECT: **SUPPORT OF S.B. 2600, SD1, RELATING TO PROCUREMENT.** Establishes
the subcontractor listing pilot program to be conducted by the University of
Hawaii. Requires a report to the legislature. Repeals June 30, 2020. (SD1).

PUBLIC DECISION MAKING

DATE: February 28, 2018
TIME: 11:00 a.m.
PLACE: Conference Room 211

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

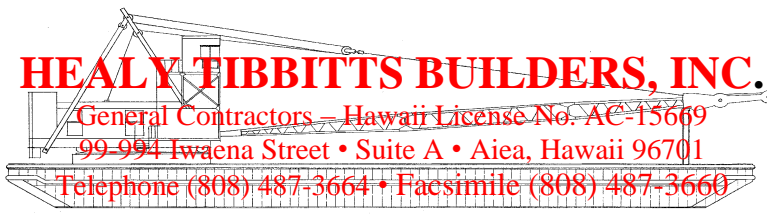
LYZ, Inc. supports the passage of S.B. 2600, SD1, Relating to Procurement, which proposes a two year pilot program with the University of Hawaii which would limit the subcontractor listing requirement under Section 103D-302, HRS for projects under a certain dollar amount. S.B. 2600, SD1 proposes to require the subcontractor listing apply to UH projects over \$3,000,000. For projects with an estimated bid of less than \$3,000,000 no subcontractor listing would be required except for disclosure of subcontractors in the trades of electrical, plumbing, asbestos, elevators and boilermaker for construction contracts. This pilot project would allow a limited subcontractor listing requirement that will likely result in less bid protests and more efficient delivery of projects.

Under current law HRS, Section 103D-302(b) requires the bidding contractor to list subcontractors and joint contractors and their scope of work to be employed on all public works projects unless the prime contractor has the required specialty license or will do the work themselves. While the original intent of the bill was to curb supposed bid-shopping, the listing of subcontractors has become a way in which bidders attack the responsiveness of a proposal, resulting in awards to non-low bidders, increasing costs to the state and taxpayers, and delaying projects due to a technicality in the submitted subcontractor list. As a result not only does the lowest bidder and their listed subcontractors get disqualified from performing, but the state could end up paying more for the project. This bill proposes to limit which projects the subcontractor listing applies to based on the cost of the project, which will in turn limit these types of challenges.

LYZ, Inc. supports S.B. 2600, SD1 and respectfully request that this Committee pass this measure. Thank you for your consideration.

A handwritten signature in black ink, appearing to read 'James N. Kurita', is written over a circular stamp or seal.

James N. Kurita
Vice President/ Chief Operating Officer



February 28, 2018

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

TO: HONORABLE DONOVAN DELA CRUZ, HONORABLE GIL KEITH AGARAN, AND MEMBERS OF THE SENATE COMMITTEE ON WAYS AND MEANS

SUBJECT: **SUPPORT OF S.B. 2600, SD1, RELATING TO PROCUREMENT.**
Establishes the subcontractor listing pilot program to be conducted by the University of Hawaii. Requires a report to the legislature. Repeals June 30, 2020. (SD1).

PUBLIC DECISION MAKING

DATE: February 28, 2018

TIME: 11:00 a.m.

PLACE: Conference Room 211

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

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

Healy Tibbitts Builders, Inc. **supports the passage of S.B. 2600, SD1, Relating to Procurement**, which proposes a two-year pilot program with the University of Hawaii which would limit the subcontractor listing requirement under Section 103D-302, HRS for projects under a certain dollar amount. S.B. 2600, SD1 proposes to require the subcontractor listing apply to UH projects over \$3,000,000. For projects with an estimated bid of less than \$3,000,000 no subcontractor listing would be required except for disclosure of subcontractors in the trades of electrical, plumbing, asbestos, elevators and boilermaker for construction contracts. This pilot project would allow a limited subcontractor listing requirement that will likely result in less bid protests and more efficient delivery of projects.

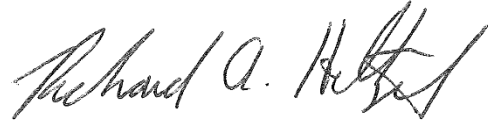
Under current law HRS, Section 103D-302(b) requires the bidding contractor to list subcontractors and joint contractors and their scope of work to be employed on all public works projects unless the prime contractor has the required specialty license or will do the work themselves. While the original intent of the bill was to curb supposed bid-shopping, the listing of subcontractors has become a way in which bidders attack the responsiveness of a proposal, resulting in awards to non-low bidders, increasing costs to the state and taxpayers, and delaying projects due to a technicality in the submitted subcontractor list. As a result, not only does the lowest bidder and their listed subcontractors get disqualified from performing, but the state could end up paying more for the project. This bill proposes to limit which projects the subcontractor

Healy Tibbitts Builders, Inc.

listing applies to based on the cost of the project, which will in turn limit these types of challenges.

Healy Tibbitts Builders, Inc. **supports** S.B. 2600, SD1 and respectfully request that this Committee pass this measure. Thank you for your consideration.

Very truly yours,
Healy Tibbitts Builders, Inc.

A handwritten signature in cursive script, reading "Richard A. Heltzel". The signature is written in black ink and is positioned above the typed name and title.

Richard A. Heltzel
President

HEARING BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS
February 28, 2018
11:00 a.m.

Senate Bill 2600 SD1
Relating To Procurement

- 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
- Carpet, Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund

Chair Dela Cruz 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 2600, which seeks to establish a pilot program under the University of Hawaii's procurement system. Under this pilot program construction projects with a total value of \$3 million or more are not required to list subcontractors and projects with a total value less than \$3 million need list the subcontractors for only five specific trades (electrical, plumbing, asbestos, elevators, and boilermaker).

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. Any weakening of the law no matter how small or great undermines public confidence in the procurement system and promotes substandard work and/or delays.

We also strongly disagree with the findings section of this measure 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 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. The proponents of this measure have not come forward with any facts to show a change in circumstances warranting deviation from the Task Force's conclusions and recommendations.

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.

Finally, as mentioned above, the measure requires subcontractor listing for only five trades where the value of the project is less than \$3 million but the proponents of this bill give absolutely no reason why subcontractor listing should be required for these five crafts and not any others considering their allegation that subcontractor listing has such a negative impact on the procurement process. All other specialty crafts should be entitled to the same protection against bid shopping, and the Committee should reject this bald faced ploy to divide the specialty crafts and attack them in piecemeal fashion.

For all of these reasons, we respectfully urge you to defer this measure indefinitely. Thank you again for this opportunity to voice our **strong opposition** to this measure.

Jeffrey S. Masatsugu



February 27, 2018

TO: Senate Committee on Ways & Means
FROM: Blake Parsons, Executive Director
SUBJECT: Opposition to *S.B. 2600, S.D. 1 - Relating to Procurement*

Chair Dela Cruz and Members of the Committee:

I am Blake Parsons, Executive Director of the Sheet Metal Contractors Association, a trade association that represents signatory sheet metal and air conditioning contractors in Hawaii

We **oppose S.B. 2600, SD1 as it is currently written** and request your committee consider the following amendments.

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

Most importantly, the report stated:

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

If you are to proceed on a pilot project, we would request your committee consider the following amendments:

1. Amend Section 2(b) to require a neutral, third-party report on the findings of the pilot program. This would give the legislature assurance that the report is fair and unbiased.
2. Amend Section 3 to reduce the pilot program to one year to repeal on June 30, 2019 as one year of procurement is adequate to consider the pilot program.

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CONTRACTORS ASSOCIATION
HAWAII

3. Amend Section 2 (1) to reduce the \$3 million limit to \$1 million, as the \$3 million limit encompasses very large projects that is not in the State's interest to exempt from the subcontractor listing requirement.
4. Remove Section 2(2) regarding the five sacred trades as this has no relevance in subcontractor listing concerns.

The listing of subcontractors will continue to serve the best interest of the State. Removing this requirement would completely gut the intent of Hawaii's procurement code and competitive sealed bidding process.

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

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

....

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

This major change to the State's procurement code would not benefit taxpayers, and would only benefit general contractors. Furthermore, it would disadvantage small-business



subcontractors whose only protection when bidding on UH projects is the subcontractor listing and competitive sealed bidding requirement.

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

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

However, we **oppose S.B. 2600, SD1 as it is currently written** and request your committee consider our amendments.

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

Mahalo,

A handwritten signature in black ink, appearing to read "Blake Parsons". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Blake Parsons
Executive Director



ELECTRICAL CONTRACTOR'S ASSOCIATION OF HAWAII

NECA Hawai'i Chapter

1286 Kalani Street, Suite B-203

Honolulu, Hawai'i 96817

PH: (808) 847-7306

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Email: ecah@ecahi.com



February 27, 2018

To: Senate Committee on Ways and Means
Honorable Chairperson Donovan Dela Cruz & Vice Chairman Gilbert Agaran

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

Subject: SB 2600, SD1 Relating to Procurement

Notice of Hearing

Date: Wednesday, February 28, 2018
Time: 11:00 AM
Place: Conference Room 211
State Capitol
415 South Beretania Street

Dear Chair Dela Cruz 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 is the Hawaii Chapter of the National Contractors Association (NECA). ECAH **Opposes** the intent and purpose of SB 2600, SD1 that establishes the subcontractor listing pilot program to be conducted by the University of Hawaii (UH). A similar program was approved by this legislature allowing UH to formulate its procurement policy for a two-year period ending in 2012. The pilot program resulted in blatant mismanagement of the program, fraud and waste. While the leadership of UH have changed since the pilot program, we're not convinced that another pilot program is warranted for such an important issue.

This measure also requires UH to submit a report to the legislature on the cost effectiveness and efficiencies realized as a result of the pilot program. UH has already gone on record to eliminate the sublisting requirement and therefore is biased toward that result. Any report on the effectiveness of the program should be completed by an independent group to ensure an unbiased report.

The requirement to list the joint contractors and subcontractors ensures that any unethical activity of bid shopping or bid peddling does not occur. Bid shopping and bid peddling only enriches the bidding contractors and not the State and taxpayers. Proponents of eliminating the sublisting have quoted that federal projects and other states do not require the sublisting or have dollar limits of contracts requiring the sublisting. This is not necessarily a good reason to eliminate it from Hawaii's laws.

Over 50 years ago, the California legislature passed the Subcontractor Listing Law to prevent the unfair practice of bid shopping and bid peddling. Their legislature found that the practice of bid shopping and bid peddling often resulted in poor quality of material and workmanship to the detriment of the public and deprived the public of the full benefits of fair competition among prime contractors and subcontractors. Citing that Federal projects do not require the sublisting is not a good reason for the State of Hawaii to follow. The fact is many qualified local contractors refuse to bid of federal projects because it doesn't provide the protection to sub-contractors. This action prevents the procurement agency from receiving the best and most qualified contractors and sub-contractors.

Reports from the recent taskforce to study this issue and a report by DAGS have shown that the number of protest caused by the sublisting is minimal, about 4% of all protest. The focus should be on the factors that have caused the majority of the protest in looking for a solution. Our opinion is all bidders should do their due diligence on the trades, required licenses and subcontractors they are listing before bid time. Most of them are the usual subcontractors that normally bid on their jobs.

Based on the above, ECAH **Opposes** the passage of SB 2600, SD1 as written and encourage this committee to stop this bill from advancing.

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

February 28, 2018

TO: HONORABLE DONOVAN DELA CRUZ, HONORABLE GIL KEITH AGARAN, AND MEMBERS OF THE SENATE COMMITTEE ON WAYS AND MEANS

SUBJECT: **SUPPORT OF S.B. 2600, SD1, RELATING TO PROCUREMENT.**
Establishes the subcontractor listing pilot program to be conducted by the University of Hawaii. Requires a report to the legislature. Repeals June 30, 2020. (SD1).

PUBLIC DECISION MAKING

DATE: February 28, 2018

TIME: 11:00 a.m.

PLACE: Conference Room 211



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

Royal Contracting Co., Ltd. **supports** the passage of S.B. 2600, SD1, Relating to Procurement, which proposes a two year pilot program with the University of Hawaii which would limit the subcontractor listing requirement under Section 103D-302, HRS for projects under a certain dollar amount. S.B. 2600, SD1 proposes to require the subcontractor listing apply to UH projects over \$3,000,000. For projects with an estimated bid of less than \$3,000,000 no subcontractor listing would be required except for disclosure of subcontractors in the trades of electrical, plumbing, asbestos, elevators and boilermaker for construction contracts. This pilot project would allow a limited subcontractor listing requirement that will likely result in less bid protests and more efficient delivery of projects.

Under current law HRS, Section 103D-302(b) requires the bidding contractor to list subcontractors and joint contractors and their scope of work to be employed on all public works projects unless the prime contractor has the required specialty license or will do the work themselves. While the original intent of the bill was to curb supposed bid-shopping, the listing of subcontractors has become a way in which bidders attack the responsiveness of a proposal, resulting in awards to non-low bidders, increasing costs to the state and taxpayers, and delaying projects due to a technicality in the submitted subcontractor list. As a result not only does the lowest bidder and their listed subcontractors get disqualified from performing, but the state could end up paying more for the project. This bill proposes to limit which projects the subcontractor listing applies to based on the cost of the project, which will in turn limit these types of challenges.

Royal Contracting Co., Ltd. **supports** S.B. 2600, SD1 and respectfully request that this Committee pass this measure. Thank you for your consideration.

Sincerely,


Leonard K.P. Leong
Vice President



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

February 27, 2018

TO: HONORABLE DONOVAN DELA CRUZ, HONORABLE GIL KEITH AGARAN, AND MEMBERS OF THE SENATE COMMITTEE ON WAYS AND MEANS

SUBJECT: **SUPPORT OF S.B. 2600, SD1, RELATING TO PROCUREMENT**. Establishes the subcontractor listing pilot program to be conducted by the University of Hawaii. Requires a report to the legislature. Repeals June 30, 2020. (SD1).

PUBLIC DECISION MAKING

DATE: February 28, 2018

TIME: 11:00 a.m.

PLACE: Conference Room 211

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

Hawaiian Dredging Construction Company, Inc. supports the passage of S.B. 2600, SD1, Relating to Procurement, which proposes a two year pilot program with the University of Hawaii which would limit the subcontractor listing requirement under Section 103D-302, HRS for projects under a certain dollar amount. S.B. 2600, SD1 proposes to require the subcontractor listing apply to UH projects over \$3,000,000. For projects with an estimated bid of less than \$3,000,000 no subcontractor listing would be required except for disclosure of subcontractors in the trades of electrical, plumbing, asbestos, elevators and boilermaker for construction contracts. This pilot project would allow a limited subcontractor listing requirement that will likely result in less bid protests and more efficient delivery of projects.

Under current law HRS, Section 103D-302(b) requires the bidding contractor to list subcontractors and joint contractors and their scope of work to be employed on all public works projects unless the prime contractor has the required specialty license or will do the work themselves. While the original intent of the bill was to curb supposed bid-shopping, the listing of subcontractors has become a way in which bidders attack the responsiveness of a proposal, resulting in awards to non-low bidders, increasing costs to the state and taxpayers, and delaying projects due to a technicality in the submitted subcontractor list. As a result not only does the lowest bidder and their listed subcontractors get disqualified from performing, but the state could end up paying more for the project. This bill proposes to limit which projects the subcontractor listing applies to based on the cost of the project, which will in turn limit these types of challenges.

Hawaiian Dredging Construction Company, Inc. supports S.B. 2600, SD1 and respectfully request that this Committee pass this measure. Thank you for your consideration.

With best regards,

A handwritten signature in blue ink, appearing to read 'Eric Hashizume', is written over a light blue horizontal line.

Eric H. Hashizume
Vice President
Hawaiian Dredging Construction Company, Inc.



NORDIC PCL CONSTRUCTION, INC.

1099 Alakea Street, Suite 1600, Honolulu, HI 96813

Telephone: 808-541-9101 ♦ Fax: 808-541-9108 ♦ www.nordicpcl.com

February 28, 2018

TO: HONORABLE DONOVAN DELA CRUZ, HONORABLE GIL KEITH AGARAN,
AND MEMBERS OF THE SENATE COMMITTEE ON WAYS AND MEANS

SUBJECT: **SUPPORT OF S.B. 2600, SD1, RELATING TO PROCUREMENT.** Establishes
the subcontractor listing pilot program to be conducted by the University of
Hawaii. Requires a report to the legislature. Repeals June 30, 2020. (SD1).

PUBLIC DECISION MAKING

DATE: February 28, 2018

TIME: 11:00 a.m.

PLACE: Conference Room 211

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

Nordic PCL Construction, Inc. **supports the passage of S.B. 2600, SD1, Relating to Procurement**, which proposes a two year pilot program with the University of Hawaii which would limit the subcontractor listing requirement under Section 103D-302, HRS for projects under a certain dollar amount. S.B. 2600, SD1 proposes to require the subcontractor listing apply to UH projects over \$3,000,000. For projects with an estimated bid of less than \$3,000,000 no subcontractor listing would be required except for disclosure of subcontractors in the trades of electrical, plumbing, asbestos, elevators and boilermaker for construction contracts. This pilot project would allow a limited subcontractor listing requirement that will likely result in less bid protests and more efficient delivery of projects.

Under current law HRS, Section 103D-302(b) requires the bidding contractor to list subcontractors and joint contractors and their scope of work to be employed on all public works projects unless the prime contractor has the required specialty license or will do the work themselves. While the original intent of the bill was to curb supposed bid-shopping, the listing of subcontractors has become a way in which bidders attack the responsiveness of a proposal, resulting in awards to non-low bidders, increasing costs to the state and taxpayers, and delaying projects due to a technicality in the submitted subcontractor list. As a result not only does the lowest bidder and their listed subcontractors get disqualified from performing, but the state could end up paying more for the project. This bill proposes to limit which projects the subcontractor listing applies to based on the cost of the project, which will in turn limit these types of challenges.

Nordic PCL Construction, Inc. **supports** S.B. 2600, SD1 and respectfully request that this Committee pass this measure. Thank you for your consideration.

Yours truly,

NORDIC PCL CONSTRUCTION, INC.


Glen Kaneshige
President



Alan Shintani Inc.
GENERAL CONTRACTOR ABC 13068

February 28, 2018

TO: HONORABLE DONOVAN DELA CRUZ, HONORABLE GIL KEITH AGARAN, AND MEMBERS OF THE SENATE COMMITTEE ON WAYS AND MEANS

SUBJECT: **SUPPORT OF S.B. 2600, SD1, RELATING TO PROCUREMENT.** Establishes the subcontractor listing pilot program to be conducted by the University of Hawaii. Requires a report to the legislature. Repeals June 30, 2020. (SD1).

PUBLIC DECISION MAKING

DATE: February 28, 2018
TIME: 11:00 a.m.
PLACE: Conference Room 211

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

Alan Shintani, Inc. supports the passage of S.B. 2600, SD1, Relating to Procurement, which proposes a two-year pilot program with the University of Hawaii which would limit the subcontractor listing requirement under Section 103D-302, HRS for projects under a certain dollar amount. S.B. 2600, SD1 proposes to require the subcontractor listing apply to UH projects over \$3,000,000. For projects with an estimated bid of less than \$3,000,000 no subcontractor listing would be required except for disclosure of subcontractors in the trades of electrical, plumbing, asbestos, elevators, and boilermaker for construction contracts. This pilot project would allow a limited subcontractor listing requirement that will likely result in less bid protests and more efficient delivery of projects.

Under current law HRS, Section 103D-302(b) requires the bidding contractor to list subcontractors and joint contractors and their scope of work to be employed on all public works projects unless the prime contractor has the required specialty license or will do the work themselves. While the original intent of the bill was to curb supposed bid-shopping, the listing of subcontractors has become a way in which bidders attack the responsiveness of a proposal, resulting in awards to non-low bidders, increasing costs to the state and taxpayers, and delaying projects due to a technicality in the submitted subcontractor list. As a result, not only does the lowest bidder and their listed subcontractors get disqualified from performing, but the state could end up paying more for the project. This bill proposes to limit which projects the subcontractor listing applies to based on the cost of the project, which will in turn limit these types of challenges.

Alan Shintani, Inc. supports S.B. 2600, SD1 and respectfully request that this Committee pass this measure. Thank you for your consideration.

Alan Shintani
President
Alan Shintani, Inc