



**Testimony to the Senate Committee on Government Operations**  
**Tuesday, February 13, 2018**  
**2:55 pm**  
**State Capitol, Room 224**

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**RE: SB 2600 – Relating to Procurement**

Chair Kim, Vice-Chair Ruderman, & 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, 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.



**Testimony by:**  
JADE T. BUTAY  
INTERIM DIRECTOR

Deputy Directors  
ROY CATALANI  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN  
DARRELL T. YOUNG

IN REPLY REFER TO:

**LATE**

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

February 13, 2018  
2:55 p.m.  
State Capitol, Room 224

**S.B. 2600**  
**RELATING TO PROCUREMENT**

Senate Committee on Government Relations

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The Department of Transportation (DOT) **supports the intent** and provides the following comments to this bill which proposes a revision to the subcontractor listing by 1) requiring the listing of all joint contractors and subcontractors for construction contracts subject to the procurement code where the total estimated contract value is \$5,000,000 or higher; and 2) requires the listing of subcontractors and joint contractors where the total bid value may be less than \$5,000,000, but only if electrical; plumbing; asbestos; elevator; or boiler, hot-water heating, or steam fitting work is involved.

Instead of applying equally across the board for all projects, the subcontractor listing requirement would apply to larger projects. Larger projects generally have more specialty trade work and it corresponds that the general contractor would need to engage and list more subcontractors on these larger projects, meeting the purpose and intent of the current subcontractor listing law (bid shopping/bid peddling).

Smaller projects generally have less specialty trade work, and for these projects, the subcontractor listing would only apply to specific specialty trades, even though the general on smaller projects would have less subcontractors to engage, and list on these projects. Passage of this proposed bill would carve out an exception to the subcontractor listing law and the original intent of guarding against bid shopping/bid peddling.

Moreover, if applied, a general contractor bidding on a pavement improvements project under the value threshold would not have to list a pavement striping subcontractor, yet a general contractor that bids on a pavement improvements project that meets the value threshold would have to list the pavement striping subcontractor.

Thank you for the opportunity to provide testimony.

HEARING BEFORE THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS  
February 13, 2018  
2:55 p.m.

Senate Bill 2600  
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 Kim and members of the Committee:

Thank you for this opportunity to submit testimony on behalf of the Painting Industry of Hawaii Labor Management Cooperation Trust Fund, Hawaii Tapers Market Recovery Trust Fund, Hawaii Glaziers, Architectural Metal Glassworkers Local Union 1889 AFL-CIO Stabilization Trust Fund, and Carpet, Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund in **strong opposition** to Senate Bill 2600, which seeks to limit State law requiring the listing of subcontractors in public construction projects to only those projects with a total value of \$5 million or more. Without giving any reason, the measure further preserves the subcontractor listing requirement for only five specific trades (electrical, plumbing, asbestos, elevators, and boilermaker) where the total value of the project is less than \$5 million.

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.

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 \$5 million but gives absolutely no reason why subcontractor listing should be required for these crafts and not any others. 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

# *SAH - Subcontractors Association of Hawaii*

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February 13, 2018

**LATE**

Testimony To: Senate Committee on Government Operations  
Senator Donna Mercado Kim, Chair

Presented By: Tim Lyons, President

Subject: S.B. 2600 - RELATING TO PROCUREMENT

Chair Mercado Kim and Members of the Committee:

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

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

Section 1 of the bill rubs us the wrong way just because it comes to a number of conclusions that are not based on fact. Although the bill talks about the State having increased cost for public works projects due to the subcontractor listing requirement, it does not give you the courtesy of explaining why that might be. We know of no objective, unbiased updated data that would allow anyone to come to that 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. It was the recommendation of that Task Force not to repeal the Subcontractor Listing Clause. That Task Force summarized that an average of 6.3% of all construction projects were protested in FY 13 and FY14 and the reasons included everything from failure to submit hard copies, mathematical errors, failure to submit bid bonds, incorrect bid bond amounts and yes, failure to list the required subcontractor. The percent of cost increases due to protests was 0.34% in fiscal year 2013 and 0.01% in fiscal year 2014. The final report of the Procurement Task Force suggests that protests for bids was a result of the subcontractor listing requirement however it goes on further to say "...after considerable discussion and analysis of the data collected, it was noted that the negative impact of the protest process was probably not as substantial as first thought and is not likely to outweigh its merits".

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 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.

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

We also do not think that the purpose section of this bill fairly describes the listing requirement 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 \$5,000,000. 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 have experienced constant bid shopping and chiseling by general contractors they refuse to participate in that process. We would not like to see the same thing happen to state and county contracts and experience any lessening of the competition.

This bill has one twist that is different than last year which continues sublisting for five specific subtrades only. We are most curious to hear any rationale and justification for that exception.

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

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

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

Thank you.