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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
GOVERNMENT REFORM
FEBRUARY 5, 2021, 9:00 A.M.

HB1214
RELATING TO PROCUREMENT

Chair McKelvey, Vice-Chair Wildberger, and members of the committee, thank you for the opportunity to submit testimony on HB1214. The State Procurement Office (SPO) opposes the amendments and added language to Section 103D-302, Hawaii Revised Statutes (HRS).

HB1214 states that time constraints between the time a bidder receives all subcontractor bids and the bid submission deadline can cause inadvertent failure to list a required subcontractor or listing of an improperly licensed subcontractor in a bid, resulting in a bid protest.

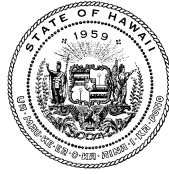
Time constraints in the bid submission process may be addressed by the purchasing agency and the general contractors. The purchasing agency of the construction project should allow adequate time for the general contractors to submit their bids. Based on that period, the general contractors may dictate to subcontractors and joint contractors when their bids must be submitted to them to be considered for work on the project. All parties are aware of the deadlines involved and should plan accordingly. It is not necessary to allow a bidder of a public works construction project to clarify and correct certain information regarding subcontractors for up to two hours after bid closing and mandate a two hour waiting period after bid closing before construction bids can be opened. It would be better to delay the bid closing an additional two hours for the entire bid to be due at once and the bidder of a public works construction project should check all information regarding subcontractors prior to bid submission.

Furthermore, it is stated that the subcontractor listing is meant to deter bid shopping and bid peddling. If the existing subcontractor listing requirement for competitive sealed bidding remains intact, it is unnecessary to add language that prohibits bid shopping and bid peddling and affords subcontractors affected by those practices a means of legal redress.

Section 103D-302, HRS, should not be amended to alter the requirement of the subcontractor or joint contractor listing for all construction contracts by the bid submission deadline.

Thank you.

DAVID Y. IGE
GOVERNOR



CURT T. OTAGURO
COMPTROLLER
AUDREY HIDANO
DEPUTY COMPTROLLER

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

WRITTEN TESTIMONY
OF
CURT T. OTAGURO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE ON
GOVERNMENT REFORM

FRIDAY, FEBRUARY 5, 2021, 9:00 A.M.
CONFERENCE ROOM 309, STATE CAPITOL

H.B. 1214

RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Wildberger, and members of the Committee, thank you for the opportunity to submit testimony on H.B. 1214.

The Department of Accounting and General Services (DAGS) strongly opposes this legislation for the following reasons:

- 1) It facilitates bid shopping.

The subcontractor listing requirement was enacted in an effort to prevent bid shopping. Allowing contractors to change their subcontractor listing after bids have been submitted allows bid shopping to occur.

- 2) The State does not benefit from allowing bid shopping to occur.

Bid shopping saves the bidder money, but the State does not share in those savings, because the bid price remains unchanged.

3) It makes bidding easier for bidders and increases the state agency's administrative burden.

Instead of continuing to require bidders to improve their bidding procedures for timely submission, it requires the State to keep track of multiple subcontractor listing submittals and prolongs the process required to collect and process bids. DAGS already spends a great deal of time processing bids on bid opening day. This will require additional processing effort and delay the posting of bid results. It will also increase time spent on OIP requests to view subcontractor listings because they will not be available for viewing by other bidders at the bid opening.

Thank you for this opportunity to provide testimony on this matter.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

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February 3, 2021

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE TINA WILDBERGER, VICE CHAIR, COMMITTEE ON GOVERNMENT REFORM

SUBJECT: **SUPPORT OF H.B. 1214, RELATING TO PROCUREMENT.** Allows a bidder of a public works construction project to clarify and correct certain information regarding subcontractors for up to two hours after bid closing. Mandates a two hour waiting period after bid closing before construction bids can be opened. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Requires public procurement construction bids to list subcontractors and joint contractors only for contracts with an unspecified total value; provided that bids lacking this list may be accepted if in the State's best interest and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than an unspecified percent of the total bid amount.

HEARING

DATE: Friday, February 5, 2021
TIME: 9:00 a.m.
PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Wildberger and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred (500) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. Our mission is to elevate Hawaii's construction industry and strengthen the foundation of our community.

GCA is in **support** of H.B. 1214, which allows a bidder of a public works construction project to clarify and correct certain information regarding subcontractors for up to two hours after bid closing. Mandates a two hour waiting period after bid closing before construction bids can be opened. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Requires public procurement construction bids to list subcontractors and joint contractors only for contracts with an unspecified total value; provided that bids lacking this list may be accepted if in the State's best interest and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than an unspecified percent of the total bid amount.

Under current law HRS, Section 103D-302(b) requires the bidding contractor to list subcontractors and joint contractors and their scope of work to be employed on all public works projects unless the prime contractor has the required specialty license or will do the work themselves. The listing

of subcontractors has become a way in which bidders attack the responsiveness of a proposal, resulting in awards to non-low bidders, 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.

Under this measure, the procurement officer would close the bidding in the usual manner, but would not open the bids until two hours after the closing. Each bidder shall have two hours after the bid closing to clarify and correct minor technical issues with the subcontractors list requirements under Section 103D-302, HRS. The proposed change will permit the bidder 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 means that the general contractor does not have time to check whether the subcontractors who have submitted bids meet the requirements to work on the job, especially the proper licenses issued by the Contractors License Board. Given the large number of "C" licenses (currently over 100 issued and growing), it becomes increasingly difficult for the general contractor to ascertain licenses and verify whether every subcontractor has the proper license to perform the work it has submitted a bid to do.

This legislation is not an attempt to give general contractors an advantage in submitting bids, nor is it, as some may argue, an opportunity to bid-shop. Instead, this legislation is increasing efficiency in the procurement process, by allowing contractors to verify the information that subcontractors provide. The proposed legislation does not permit the contractor to change its proposed bid amount. The two hours will permit the bidder to ensure the subcontractor/joint contractor list is complete and listed subcontractors/joint contractors are properly licensed, are bondable (where applicable), and have all the required insurance coverage. This will reduce the likelihood of errors and result in reducing the number of bid protests which often delay public works projects and, in most cases, increase the cost of public works project for the state. This proposed amendment will result in more complete and accurate bid submittals and reduce the number of potential bid protests.

For these reasons we ask that the Committee pass this measure.

Thank you for this opportunity to testify in support of this measure.

SAH - Subcontractors Association of Hawaii

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February 5, 2021

Testimony To: House Committee on Government Reform
Representative Angus L.K. McKelvey, Chair

Presented By: Tim Lyons, President

Subject: H.B. 1214 – RELATING TO PROCUREMENT

Chair McKelvey and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. 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 AND AIR CONDITIONING NATIONAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

We are opposed to this bill.

Again we find fault with the premise of this bill. Time constraints exist between the general and the sub because the general contractors are notorious for shopping the bid. If you submit a bid too early, you won't get the job because the general contractor will call other subcontractors, give them your price and ask if you can beat it. It is not the fault of subcontractors. We object to this bill because it lessens the impact of the Subcontractor Listing Law. Studies have shown that the Subcontractor Listing Law works. It stops or minimizes bid pedaling and bid shopping. Why do we keep messing with it? Bills are proposed to change it because general contractors do not like having to list their subs, period. What they want to do is to be able to shop the bid. This bill allows them two (2) hours to do that and we can tell you that an awful lot of shopping can go on in those two (2) hours. If nothing else, the general contractor will take the most lucrative ones and shop those and it is important to remember that if the general contractor achieves any cost savings as a result of his bid shopping, it goes into his pocket not back to the State; not back to the taxpayers.

It has been determined that bid shopping is a bad thing and general contractors have agreed. So what this bill says is, "yes", it is a bad thing but we are going to let you do that for two (2) hours. Go ahead and chisel for two (2) hours and then you have to stop.

We would note that although the bill calls for actions to recover monetary damages, those are impractical. There is no way that a subcontractor who files alleging bid shopping or bid pedaling would be able to prove it without the cooperation of the prime contractor, which is unrealistic. And just based on the filing, they would be placed on the unofficial "black list" of subcontractors not to use. That section does nothing for us.

We realize that this bill is prompted based on a perception that protests are a huge problem however we refer you to testimony provided to this Legislature only three (3) years ago on H.B. 1229, HD1, SD 1 in which the Comptroller was quoted as saying “[T]he public perceives that protests are a large problem in the procurement process; however, the statistics do not support this”. We know of no objective unbiased, updated data that would allow anyone to come to a contrary conclusion.

This bill is a bad bill and all it does is open the door to allow for a “watering down” of what has already been admitted as a workable and viable provision in the State’s procurement law. We urge this Committee not to pass the bill.

Thank you.

LATE

HB-1214

Submitted on: 2/4/2021 3:50:29 PM

Testimony for GVR on 2/5/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gregg Serikaku	Plumbing & Mechanical Contractors Association of Hawaii	Oppose	No

Comments:

Chair McKelvey, Vice-Chair Wildberger and Members of the Committee,

We are concerned with the 2 hour allowance provided for bidders to clarify their sublist, as it is not clear if the sublist will be submitted at time of bid, and what types of clarifications will be allowed. We feel the sublist should be submitted at time of bid and that clarifications should not allow the addition of a subcontractor or change of an originally listed subcontractor. We have further concerns on a proposed unspecified minimum contract value threshold and percent of contract value that needs to be met to require the sublisting as this unfairly impacts smaller subcontractors by denying them the protections afforded by the sublisting requirement.

Thank you,
Gregg Serikaku, Executive Director