

Honolulu, Hawaii
FEB 10 , 2022

RE: H.B. No. 1908
H.D. 1

Honorable Scott K. Saiki
Speaker, House of Representatives
Thirty-First State Legislature
Regular Session of 2022
State of Hawaii

Sir:

Your Committee on Government Reform, to which was referred
H.B. No. 1908 entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT,"

begs leave to report as follows:

The purpose of this measure is to:

- (1) Allow a bidder of a public works construction project to clarify and correct immaterial or technical issues with subcontractor listings for up to twenty-four hours after the bid submission deadline;
- (2) Require bids for construction be publicly opened no sooner than twenty-four hours after the bid submission deadline; and
- (3) Define "immaterial or technical information".

Your Committee received testimony in support of this measure from the General Contractors Association of Hawaii and Subcontractors Association of Hawaii. Your Committee received testimony in opposition to this measure from the Department of Accounting and General Services; Department of Budget and Fiscal Services of the City and County of Honolulu; 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. Your Committee received comments on this measure from the Judiciary, Department of Transportation, State Procurement Office, Contractors License Board, and Plumbing and Mechanical Contractors Association of Hawaii.

Your Committee finds that the Hawaii Public Procurement Code currently requires general contractors to disclose the subcontractors they intend to use on a project, which is intended to deter bid shopping, the practice of low-bidding general contractors unethically extracting lower prices from subcontractors under threat of replacement. However, your Committee recognizes that this disclosure requirement has the unintended consequence of increasing the number and complexity of construction protests.

Your Committee further finds that time constraints from when a bidder receives the bids from all of its subcontractors up until the procuring agency's bid submission deadline may also cause inadvertent failures to list a required subcontractor or the listing of erroneous subcontractor license numbers in a bid. This measure allows for additional time for prime contractors to correct their subcontractor listings and ensure that subcontractors are listed properly on the bid submittal and are licensed, thereby minimizing bid challenges, costs, and delays of public works construction projects while maintaining the integrity of the bid process.

Your Committee notes the discussions and concerns raised in the testimony between the General Contractors Association of Hawaii and 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 regarding the language contained in this measure as it is based on laws of another state. The language in this measure, as introduced, would inadvertently conflict with and undo the right of the hearings officer under Chapter 103D, Hawaii Revised Statutes, to allow for a resubmittal of bids within a certain timeframe if it appears there was a technical error. As such, your Committee has amended this measure to better conform with existing Hawaii statutes and



preserve the rights of the hearing officer, independent of section 103D-302, Hawaii Revised Statutes, to issue a substitution of the bid.

Your Committee has amended this measure by:

- (1) Providing that the twenty-four hour period to clarify and correct immaterial or technical issues with subcontractor listings after the bid submission deadline is complementary and in addition to the time allowed by the Procurement Policy Board to correct or withdraw inadvertently erroneous bids;
- (2) Changing its effective date to July 1, 2112, to encourage further discussion;
- (3) Inserting a sunset date of June 30, 2024; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

Your Committee notes that the conflict between general contractors and subcontractors over bid listing has been a vexing one for the State and is heartened by the new dialogue and discussion between both parties that attempts to resolve this issue to allow for bid substitution while not undermining the subcontractor listing provision of the Hawaii Public Procurement Code. Your Committee respectfully requests that your Committee on Consumer Protection & Commerce, should it choose to deliberate on this measure further, encourage this continuing dialogue and exchange, particularly on the amendments that have been made by your Committee to address the concerns that were raised in testimony by subcontractors.

As affirmed by the record of votes of the members of your Committee on Government Reform that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1908, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1908, H.D. 1, and be referred to your Committee on Consumer Protection & Commerce.



Respectfully submitted on
behalf of the members of the
Committee on Government Reform,



ANGUS L.K. MCKELVEY, Chair



