

**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

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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.

HOUSE BILL 1211  
RELATING TO PROCUREMENT

Chair McKelvey, Vice-Chair Wildberger, and members of the committee, thank you for the opportunity to submit testimony on HB1211. The State Procurement Office (SPO) provides the following comments:

HB1211 establishes a pilot program that would not require the mandatory subcontractor listing for smaller state construction projects (less than \$3,000,000) to be conducted by the Department of Accounting and General Services.

Section 103D-302(b) of the Hawaii Revised Statutes (HRS) requires 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. The subcontractor listing requirement was enacted in an effort to prevent post-bid occurrences of bid shopping by prime contractors who are awarded State and County construction projects.

A Task Force Report submitted February 3, 2016, stated that the subcontractor requirement has both positive and negative impacts on the procurement process. Government agencies have found the subcontractor listing to be useful because it provides the opportunity to check the listed subcontractors prior to making an award and can allow agencies to verify whether subcontractors to be used on a project are on any debarment list and that they possess active and valid contractor licenses before the contract is awarded. Rejection letters issued by government agencies served to educate general contractors so that they do not repeat the error in a future bid. Rejection letters due to listing of unlicensed subcontractors, informs the bidders

as to the importance of checking the licenses of their selected subcontractors before submitting a bid.

On the other hand, the subcontractor listing requirement for construction bids has caused problems for both bidders and procurement personnel. Evaluation of the subcontractor listing and the protests centered on the subcontractor listing have added time to the procurement process. The contractor licensing laws are difficult to understand because of the number of licenses, the amount of overlap between the defined scopes of licenses, and the frequent need for interpretation by the Contractor's License Board to determine which license(s) are required to perform items of work called for in the construction plans and specifications. It is a frequent source of protests as competing bidders will challenge the subcontractor listings in attempts to disqualify and displace lower priced bids.

The subcontractor listing requirement has also resulted in increased construction costs when the apparent low bidder is displaced due to an error or omission in the subcontractor listing. This occurred for approximately 1% of construction projects awarded in each of fiscal years 2013 and 2014. What the data shows is that impacts to construction costs are relatively small overall, but there could be significant costs impacts to individual projects.

At that time, the Task Force voted for "no change" to the subcontracting listing law for construction procurement.

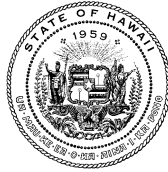
Subcontractors continue to assert that that the subcontractor listing requirement prevents bid shopping. How will these concerns be addressed in the pilot program that does not require a subcontractor listing for construction projects valued at less than \$3,000,000?

We must keep in mind as we consider any changes, that the Hawaii Public Procurement Code (code) is the single source of public procurement policy to be applied equally and uniformly, while providing fairness, open competition, a level playing field, government disclosure and transparency in the procurement and contracting process vital to good government.

Public procurement's primary objective is to provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion, or fraud in awarding of contracts.

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. 1211

RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Wildberger, and members of the Committee, thank you for the opportunity to submit testimony on H.B. 1211.

The Department of Accounting and General Services (DAGS) supports the intent of this bill and offers the following comments:

The Apprenticeship Agreement Preference requires the submission of subcontractor listings to determine whether a bidder qualifies for the preference. Agencies need to know what tradework the bidder intends to self-perform. Ideally, concurrent repeal of the Apprenticeship Agreement Preference would remove the necessity to submit subcontractor listings.

DAGS' past experience with subcontractor listing requirements may also help to determine whether this pilot program is necessary as well as to assist in weighing the benefits vs. adverse

impacts of the subcontractor listing requirement. For DAGS, elimination of the subcontractor listing requirements may:

- Reduce the Number of Bid Protests. During FY14-20, DAGS had a total of forty-six protests for its construction projects. Approximately 72% of those protests involved the subcontractor listing. Had the subcontractor listing requirement not been in place during that time period, we would have had a 63% reduction in bid protests for construction projects (the 9% difference is due to the fact that some protests included another issue in addition to the subcontractor list issue).
- Reduce the Average Time for Award of Bid Projects. Over the same time period, it took DAGS, on the average, 75 calendar days to resolve each protest. Our solicitation documents usually require us to make an award within a 60 calendar day period to allow for standard bid award processing requirements even before adding time for protest resolution.

In summary, DAGS supports elimination of the subcontractor listing provided the information is not necessary for verification measures, such as the Apprenticeship Agreement Preference.

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.

Uploaded via Capitol Website

February 3, 2021

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

SUBJECT: **SUPPORT OF H.B. 1211, RELATING TO PROCUREMENT.** Establishes the subcontractor listing pilot program to be conducted by the department of accounting and general services. Requires a report to the legislature.

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. 1211, which establishes the subcontractor listing pilot program to be conducted by the Department of Accounting and General Services and requires a report to the legislature.

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. This bill allows the Department of Accounting and General Services to identify possible projects with the Governor's approval that shall not require mandatory listing in competitive sealed bids for state construction projects where the estimated contract value is less than \$3,000,000. The GCA believes that this will likely result in less bid protests and more efficient delivery of projects.

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***

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

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

February 5, 2021

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

Presented By: Tim Lyons, President

Subject: H.B. 1211 – 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 do agree with the very premise of this bill. That includes most of Section 1 of the bill.

It is, we would admit, a common misconception that protests are based on the mandatory Subcontractor Listing Clause. That is taken out of contest. It has been claimed that a lot of protests have been a result of the overall subject of Subcontractor Listing Clause. Many times it is because general contractors have not done their due diligence in properly listing the subcontractors. So in other words, because the general contractor hasn't done their "homework", and didn't list down their subs properly we are going to blame the clause and say that there should be a better way of doing things.

The pilot project that this bill refers to is unnecessary. We say this because it has been tried once and it was a miserable failure. The 2010 Legislature did this by exempting the University of Hawaii from the Procurement Code. It exempted one (1) of nineteen (19) different agencies subject to the Procurement Code from the law. It was sold as a pilot project for three (3) years. At the end of the three (3) year period the Legislature did not renew the exemption. They did not renew the exemption because it was a failure. Many subcontractors stopped bidding to the University of Hawaii and UH evidenced a huge drop in competition. Subs stopped bidding those jobs because of the lack of a Subcontractor Listing Clause and the fact that they were getting bid chiseled and "jerked" around by general contractors.

However, I do want to go back and touch on the premise of this bill. The bill talks about the time constraint between a bidder getting his subcontractor bids and the bid submission deadline. There is only one reason for that and it is caused by general contracotrs. If the subcontractor submits their bid in a timely manner, the general contractor shops the bid. The bill also talks about inadvertent

errors. We have offered solutions in the past to fix this but they have been rejected. The bill also talks about the federal government not requiring the listing of subcontractors and you will find that by and far the majority of subcontractors that bid State work do not bid Federal work and it is for that express reason; because there is no Subcontractor Listing Law.

One area we can agree with in the bill is that a change to the procurement bidding process could create unforeseen difficulty and the bill is correct in that regard. As far as the pilot project goes, the bill suggests that DAGS will identify the projects that will not require mandatory listing and competitive sealed bids with a value of less than \$3,000,000.00; that is way too high. There are a multitude of jobs that are less than \$3,000,000.00 and those are the ones that oftentimes get played around with. So it appears that we are going to have a pilot project with an unspecified number of jobs with an unspecified ending date.

We strongly object to this bill and think that it is just a "foot in the door" to eliminate Subcontractor Listing which has long been the motivation of many.

Thank you.



LATE

**HB-1211**

Submitted on: 2/4/2021 3:34:47 PM

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

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

Comments:

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

Our Association respectfully opposes HB1211 as written. If the desire is to establish a pilot procurement program, we encourage that such a program incorporate changes that are acceptable by the primary stakeholders that will be most negatively impacted by any change to the subcontractor listing requirement.

Thank you,

Gregg Serikaku, Executive Director



February 4, 2021

**TO:** House Committee on Government Reform  
**FROM:** Blake Parsons, Executive Director  
**SUBJECT:** Opposition to *HB1211*

Chair McKelvey and Members of the Committee:

I am Blake Parsons, Executive Director of the Sheet Metal and Air Conditioning Contractors' National Association of Hawaii, a trade association that represents signatory sheet metal and air conditioning contractors across the state.

We **oppose H.B. 1211 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(a) to note that the pilot program will run for one year.



2. 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.
3. Amend Section 2(b) to reduce the \$3 million limit to \$1 million, as the \$3 million limit encompasses very large projects that are not in the State's interest to be exempt from the subcontractor listing requirement.

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 major protection 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. SMACNA and our members would be happy to explore these and other options.

However, we **oppose H.B. 1211 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".

Blake Parsons  
Executive Director