



**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 AM

HOUSE BILL 1385  
RELATING TO PROCUREMENT

Chair McKelvey, Vice-Chair Wildberger, and members of the committee, thank you for the opportunity to submit testimony on HB1385. The State Procurement Office (SPO) appreciates the intent of this bill, however, the SPO would require a minimum of \$164,000 pre-tax (e.g. one-time funding of \$150,500 and annual maintenance funding of \$13,500) to develop, implement, and maintain a vendor performance tracking system. We provide the following comments:

The State finds that, per its adoption of the ABA Model Procurement Code, that past performance is already allowable inside of the procurement statute. What is missing is the guidance that is found as supplemental Rules. Thus, on May 28, 2019, the Procurement Policy Board voted to approve to development of past performance Rules.

In 2019, the SPO contracted the services of a consultant to review the Comptroller Construction Task Force Report of 2015, analyze the current environment, assist in the development of past performance rules, and make recommendations for the creation of a database. The SPO is currently reviewing the consultant's report and recommendations, along with feedback from CPO jurisdictions and the contractor community, to determine how best to incorporate the information when amending the Rules.

The Rules will cover how to incorporate past performance criteria in a bid or offer, how to evaluate past performance, how to evaluate performance post-award, and how to collect and share that information across siloed agencies through the use of a central state-wide database.

As important and valuable as this measure is, it must provide the resources necessary for a project of this scope and magnitude. In fact, this project will be an extensive undertaking, requiring expertise, staffing, and funding resources in order to develop any new processes, procedures, templates, contract terms and conditions, and reporting requirements compliant with the Hawaii Code, which will require resources the SPO does not have.

Upon receipt of the appropriated and allocated funding for the report, the SPO will first procure the respective consulting services so that the SPO will be able to create the tools and infrastructure for buyers to adopt a new policy, which is essential for successful implementation. In order to continue this work, the SPO is requesting one-time funding of \$150,500, and annual maintenance funding of \$13,500 to develop the following tools:

	Delivery	\$
1	Past Performance Guide	\$15,000
	Prepare a past performance implementation guide that provides information for Hawaii contracting officers with more user-friendly detailed instructions on how to effectively implement the Administrative Rules into practice. The implementation guide will include detailed explanations on how to evaluate past performance, examples of quality past performance narratives, and explanations regarding recording negative performance without using the past performance evaluation as a punitive tool outside of due process.	
2	Past Performance Database Functional Requirements Document	\$30,000
	Prepare a Past Performance Database Functional Requirements Document (FRD). The FRD will describe the Database's functional requirements. Our FRD will explain the objectives of the Past Performance Database, the forms and data to be entered, workflow of a performance evaluation, users and roles, system outputs, and applicable regulatory requirements, etc. An FRD is solution independent. It is a statement of what the database is to do - not how it functions technically. The FRD does not commit the Database developers to a design. The SPO will be able to include the FRD in a solicitation for design and delivery of the Past Performance Database.	
3	Create Past Performance Database	\$50,000
4	Preparation and Publication of Rules	\$5,000
5	Rules must be prepared, surveys sent, facilitated discussions and the publication fee	\$4,000
6	Training	\$46,500
	<b>Total One-Time Funding</b>	<b>\$150,500</b>
7	Annual Database Maintenance (estimated at 27% of cost)	\$13,500
	<b>Total Funding Recurring Annually</b>	<b>\$13,500</b>

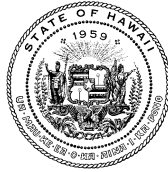
The SPO is committed to working with the State Legislature and Agencies to develop the best policy and procedures for procurement that allow for streamlining, efficiencies, innovation, cost

control, and fair and equal contracting opportunities across the State of Hawaii and recognizes the benefits of a past performance database system. Therefore, the cost of implementing a successful past performance database is estimated to start at a minimum of \$164,000 for fiscal year 2021-2022.

The SPO also recommends removing Section 5 on pages 4 and 5, in its entirety, as efforts have already begun to address past performance in competitive sealed bidding in the HAR 3-122, Subchapter 5.

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. 1385

RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Wildberger, and members of the Committee, thank you for the opportunity to submit testimony on H.B. 1385.

The Department of Accounting and General Services (DAGS) support the intent of the legislation to improve procurement, and we offer the following comments.

DAGS believes more coordination and study are needed on the impacts of implementing the consideration of past performance and the proposed amendment of §103D-302(h) to add the ability to negotiate with the low bidder if “the lowest responsive and responsible bid for a construction procurement significantly differs from the amount estimated by the State for that project” prior to mandating such action. We also recommend that the subcontractor listing requirement not be deleted unless the Apprenticeship Agreement Preference is repealed.

DAGS has strong reservations with broadly mandating the consideration of past performance for the following reasons:

1) legislation mandating the consideration of past performance is not necessary because the current procurement code already allows for the consideration of past performance and already contains mechanisms and processes which can be used to address the issue of “poor performing” contractors; 2) the proposed legislation will lead to large fund expenditures due to the increased volume of work and staffing requirements placed on agencies in the areas of procurement and construction management; 3) enacting legislation mandating the consideration of past performance without careful study of the problem in relation to existing and alternative means and methods of addressing this may not cure the problem and is likely to further negatively impact the procurement process with a substantial increase in the number of protests; and 4) if this legislation does not fix the problem, or has negative impacts on the construction procurement process, the law could not be amended until after the next legislative session.

DAGS also has strong reservations for the addition of the proposed language to §103D-302(h), because it would be unfair to other than the lowest bidders. For example: Say the apparent lowest bid for a project appears unreasonably low in comparison with all other bids received for the project. Further inquiry indicates that the apparent low bidder left out an important component of the work. The proposed legislation would allow the low bidder to raise its bid price to include the work and to more closely align with the State’s estimate, provided it is still below the second lowest bid, which would be unfair to all other bidders who may have already expended the effort and accounted for the additional cost to include all of the required elements of work. Such a practice would: encourage the practice of “low-balling” bids, which is not in the best interest of the State; be attractive to the “poor-performing” contractors the legislature is trying to avoid hiring; and encourage the use of Contractors who are not careful in the preparation of their bids.

Last, but not least, in order to determine whether a bidder qualifies for the Apprenticeship Agreement Preference, the agency needs to know what categories of work the bidder is self-performing. Therefore, we recommend the Apprenticeship Agreement Preference be repealed in conjunction with the effort to remove the subcontractor listing requirement.

DAGS looks forward to collaborating with the State Procurement Office to mitigate potential negative impacts in efforts to improve our procurement system.

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



ELECTRICAL CONTRACTOR'S ASSOCIATION OF HAWAI'I

NECA Hawai'i Chapter

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February 3, 2021

To: House Committee on Government Reform  
Honorable Chairperson Angus McKelvey & Vice Chair Tina  
Wildberger

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

Subject: HB 1385, Relating to Procurement

Notice of Hearing

Date: Friday, February 5, 2021  
Time: 9:00 AM  
Place: Conference Room 309  
State Capitol  
415 South Beretania Street

Dear Chairperson McKelvey, Vice Chairperson Wildberger 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 submits comments on this measure on procurement policy. While we understand the efforts of this legislature to find effective and efficient policies of procuring construction projects by instituting policies that will substantially reduce bid protests, the recommendation to eliminate the nature and scope to be performed by a subcontractor does not achieve its intended objective without unintended consequences. The nature and scope of work to be perform and the requirement to include a subcontractor listing, go hand in hand in order to have a transparent and equitable policy. The elimination of the nature and scope of each subcontractor will conceal the specific work performed by each contractor. One of the principles of the subcontractor listing law is to provide to the public what they are paying for and who will be paid. Eliminating the nature and scope of the project will also result in not knowing what license classifications are required to perform the work in addition to not knowing who is performing the work. Secondly, in the January 2020 SPO report by the third party consultant, there's no evidence that this proposal provides for transparency and integrity in the policy. The report states that eliminating the nature and scope simply reduces the amount of information required that will probably result in a reduction of bid protest. This is not good policy.

The current State procurement procedures standardizes the process for all departments and agencies that allows for the most equitable and even playing field in securing services and contracts from vendors and contractors. This is particularly true for the construction industry. Electrical contractors among other subtrade contractors are primarily subcontractors in the procurement process and requires the full protections that HRS, Chapter 103D provides including but not limited to including the nature and scope of work to be performed by each subcontractor.

For those reasons, we ask that this committee **do not** eliminate the nature and scope of work as proposed in HB 1385.

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



# ***SAH - Subcontractors Association of Hawaii***

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

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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. 1385 – 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

Our biggest problem with this bill is Part 5 and this involves suggested changes to the Subcontractor Listing Clause.

First, we would like to note that sometimes it is nice to have an outside contractor do the evaluation and study of the system in the hopes that they can look at it with a "fresh eye". The disadvantage is that they come with recommendations that are only half thought through or whose implementation is impractical. Unfortunately too many studies like this one do a great job of researching the facts but then offer solutions without sounding those solutions out with the parties so the solutions can be evaluated.

In order to appreciate this area, you have to go back to the very beginning of the Subcontractor Listing Clause. Chiseling and bid-shopping are prevalent, even with the system that we have today, although it is minimized. Subcontractors are in an economically disadvantaged position from general contractors. It is the general contractor who awards them work, whether it is a state job or a private job. It is the general contractor who receives the payment, so the sub is totally dependent on the general's processing of that payment in order to get paid. Generals that provide \$2,000,000.00, \$4,000,000.00 and \$20,000,000.00 worth of work to a particular sub have a great deal of leverage over them. This is not to say that every general is a bad guy. Unfortunately, however, there are too many of them that do exist which is why the Subcontractor Listing Law is in our statutes and as this bill points out, and everyone agrees, that it certainly does its job in helping to mitigate those kinds of situations AS IT IS WRITTEN.

Below you will find a chart with two (2) examples. One with the current information that generals must provide and the other with what the bill provides.

## CURRENT

**Joint Contractors or Subcontractors List**

(BIDDER'S INSTRUCTIONS: Refer to SECTION 00210 - INSTRUCTIONS TO BIDDERS for detailed instruction to fill out this list. Write in the complete firm name and nature of work to be performed by the required joint contractor or subcontractor.)

COMPLETE FIRM NAME JOINT CONTRACTOR OR SUBCONTRACTOR	NATURE OF WORK TO BE PERFORMED
<del>Harris Rebar South Pacific Inc</del>	Reinforcing Steel <sup>RPB</sup>
West Maui Construction	CMU Masonry *
<del>Viking Construction</del>	Drywall/Metal Stud Framing <sup>DB</sup>
Beachside Roofing	Roofing TPO *
CML Security	Detention Equipment *
CML Security	Security Electronics *
Darvin D. Leis	Plumbing *
Darvin D. Leis	HVAC *
Darvin D. Leis	Fire Sprinkler ↓
Beachside Roofing	Sheet Metal *
ELCCO	Electrical *
Maui Kupono Builders	Sitework
IG Steel	Structural Steel
Jade Painting	Painting
Beachside Roofing	Roofing Standing Seam Metal Roofing
Kahului Carpet	Flooring
V+C Drywall Contractors, Inc.	Drywall/Acoustical ceiling/Insulation
CMC dba Associated Steel Works	Reinforcing Steel
Bowman Termite	Termite Control

## PROPOSED

**Joint Contractors or Subcontractors List**

(BIDDER'S INSTRUCTIONS: Refer to SECTION 00210 - INSTRUCTIONS TO BIDDERS for detailed instruction to fill out this list. Write in the complete firm name and nature of work to be performed by the required joint contractor or subcontractor.)

COMPLETE FIRM NAME JOINT CONTRACTOR OR SUBCONTRACTOR	NATURE OF WORK TO BE PERFORMED
<del>Harris Rebar South Pacific Inc</del>	
West Maui Construction	
<del>Viking Construction</del>	
Beachside Roofing	
CML Security	
CML Security	
Darvin D. Leis	
Darvin D. Leis	
Darvin D. Leis	
Beachside Roofing	
ELCCO	
Maui Kupono Builders	
IG Steel	
Jade Painting	
Beachside Roofing	
Kahului Carpet	
V+C Drywall Contractors, Inc.	
CMC dba Associated Steel Works	
Bowman Termite	

As you can see from this, the chart on the right tells you very little, so to that extent, the consultant's recommendation is true: If you don't provide enough information then nobody knows what's going on and no one can protest it!

As the Section 3 summary points out, "all agree the statute is effective at deterring bid-shopping..." "...full repeal of the statute is not a recommendation". Please note and remember that any savings achieved as a result of subcontractor substitution goes directly to the general's pocket. Not to the state or the taxpayers.

So the study recommends to eliminate what the subcontractor is going to do. As we pointed out, the statute's intention is to eliminate or mitigate bid-shopping. Example: On the Subcontractor Listing

form, if you have one sub listed and the general knows that this bid is for the entire roof assembly, (in other words, the flat roof, the steep roof and the metal roof), but the other subcontractor that is listed has submitted a price to the general contractor for only the metal roof, then you have a situation that is ripe for bid-shopping as the general plays between roofer number one and roofer number two.

We appreciate the intent of the consultants in trying to determine a solution to this problem. All the parties have worked on various proposed solutions over the past 5 or 6 years. What it comes down to is that some have the goal for flat out elimination of the clause and short of that, eliminating segments of it so that it is rendered ineffective and useless.

Based on the above, we cannot recommend inclusion of Part 5 (Section 13) of this bill.

Thank you.

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**LATE**  
**GCA of Hawaii**  
GENERAL CONTRACTORS ASSOCIATION OF HAWAII  
Quality People. Quality Projects.

Uploaded via Capitol Website

February 4, 2021

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

SUBJECT: **PROVIDING COMMENTS ON H.B. 1385, RELATING TO PROCUREMENT.** Implements certain recommendations of the procurement policy review conducted pursuant to House Resolution No. 142, Regular Session of 2016. Requires the state procurement office to submit a report to the legislature regarding its progress in implementing the procurement policy review recommendations

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 providing comments and suggested amendments to H.B. 1385, which implements certain recommendations of the procurement policy review conducted pursuant to House Resolution No. 142, Regular Session of 2016. Requires the state procurement office to submit a report to the legislature regarding its progress in implementing the procurement policy review recommendations.

The intent of this measure is to adopt recommendations from an independent review to closer align the state procurement process to the federal procurement process.

GCA believes that parts III and IV of this measure could have the unintended consequence of increasing administrative costs and creating additional bureaucracy.

GCA is in support of part V which seeks to reduce the risks of protests due to the subcontractor listing requirements of the Procurement Code. The subcontractor listing requirement has become a way in which bidders 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.

The procurement policy review found that 45% of all protests the State receives (including all protests related to non-construction) alleged a defect in the listing of subcontractors for a construction project. The report further provided a suggestion that is not an example of federal alignment. Specifically, the report stated on page 114 :

“While not an example of greater Federal alignment (and, thus, not eligible as an official Recommendation in this Report), it bears noting that the State’s protest-related risks could be greatly mitigated by adopting a variation and expansion of California’s post-bid correction process outlined in its subcontractor disclosure statute. California’s statute contemplates innocuous errors and specifically builds in a controlled correction period where typos can be corrected after bid opening. See California. Public Contract Code Chapter 4100”

Because the intent of this measure is to adopt the recommendations from the procurement policy review conducted pursuant to House Resolution No. 142, Regular Session of 2016, **GCA would like to offer the following suggested amendments** to further reduce the risks of having technical mistakes result in a bid challenge by allowing a bidder of a public works construction project to clarify and correct minor technical issues with subcontractor listings for up to twenty-four hours after the closing of the submission of the bids.

Under this proposed change, the procurement officer would close the bidding in the usual manner, but would not open the bids until twenty-four hours after the closing. Each bidder shall have twenty-four 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” (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 he 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 twenty-four 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 some 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 request the Committee adopt the following amendments.

#### PART V

SECTION 13. The legislature finds that the Hawaii public procurement code currently requires general contractors to disclose the subcontractors they intend to use on a project. The intent of this requirement is to deter bid shopping (the practice of low-bidding general contractors unethically extracting lower prices from subcontractors under threat of replacement). Although stakeholders agree that the disclosure requirement accomplishes this goal, the legislature notes that the federal government and a vast majority of states do not have a similar disclosure requirement in their procurement processes.

The legislature also finds that this disclosure requirement has the unintended consequence of increasing the number and complexity of construction protests. The state procurement office's review of Hawaii procurement laws found that most protests allege issues stemming from the subcontractor listing requirement. The review recommended that the State amend its disclosure requirement to require disclosure of only the name of a subcontractor and not repeal the requirement that the bid disclose what a subcontractor will do. This change would substantially reduce the risk of protests while continuing to protect subcontractors from the undesirable practice of bid shopping.

The legislature also finds that many recent bid protests have been based on subcontractor listing and licensing issues, including where a bidder has failed to list a required subcontractor or when a listed subcontractor did not possess the appropriate license and was not qualified to perform the work. 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 the listing of an improperly licensed subcontractor in a bid, resulting in a bid protest.

Furthermore, inadvertent errors occur due to the complexity of the laws regarding contractor licenses under chapter 444, Hawaii Revised Statutes; title 16, Hawaii Administrative Rules; and judicial, quasi-judicial, and agency interpretations of these laws and rules. Oftentimes, technical mistakes in a low bidder's proposal result in a bid challenge, thus delaying the execution and delivery of public works projects. As a result of bid challenges, projects are also delayed, funding lapses, and the final project cost may increase.

While subcontractor listing is meant to deter bid shopping and bid peddling, providing prime contractors with additional time to correct minor technical issues with subcontractor listings would facilitate the legislature's intent of ensuring that subcontractors are listed properly on the bid submittal and



are licensed, while maintaining the integrity of the bid process.

The purpose of this part is to:

- (1) Implement recommendation III-2 of the state procurement office's review of Hawaii procurement laws by eliminating the requirement that bidders disclose the nature and scope of work expected to be performed by a subcontractor; and
- (2) Minimize bid challenges, costs, and delays of public works construction projects by allowing a bidder of a public works construction project to clarify and correct minor technical issues with subcontractor listings for up to twenty-four hours after the closing of a bid.

SECTION 14. Section 103D-302, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

"(b) An invitation for bids shall be issued, and shall include a purchase description and all contractual terms and conditions applicable to the procurement. If the invitation for bids is for construction, it shall [~~specify~~]:

- (1) Specify 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.]; and~~

(2) Allow the bidder to provide clarity and correction of the subcontractor information required by paragraph (1) for up to twenty-four hours after the closing of the submission of the bids.

Construction bids that do not comply with this [~~requirement may~~] subsection shall be accepted if [~~acceptance is in the best interest of the State and~~] the value of the work to be performed by the joint contractor or subcontractor is equal to or less than one per cent of the total bid amount.

(c) Adequate public notice of the invitation for bids shall be given a reasonable time before the date set forth in the invitation for the opening of bids. The policy board shall adopt rules [~~which~~] that specify:

- (1) The form that the notice is to take;
- (2) What constitutes a reasonable interim between publication and bid opening; and
- (3) How notice may be published, including publication in a newspaper of general circulation, notice by mail to all persons on any applicable bidders mailing list, publication by any public or private telecommunication information network, or any other method of publication it deems to be effective.

(d) Bids shall be opened publicly in the presence of one or more witnesses, at the time and place designated in the invitation for bids[-]; provided that if the bid is for construction, it shall be opened no sooner than twenty-four hours after the closing of the submission of the bids. The amount of each bid and other relevant information specified by rule, together with the name of each bidder shall be recorded. The record and each bid shall be open to public inspection."

Thank you for this opportunity to provide comments on this measure.



LATE

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PH: (808) 597-1216

GREGG S. SERIKAKU  
EXECUTIVE DIRECTOR

Via Email

February 4, 2021

Representative Angus L.K. McKelvey, Chair  
Representative Tina Wildberger, Vice-Chair  
House Committee on Government Reform

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

**SUBJECT: HB1385 RELATED TO PROCUREMENT**

My name is Gregg Serikaku, Executive Director for the Plumbing and Mechanical Contractors Association of Hawaii, and we are the State's largest association representing contractors that perform plumbing, air conditioning, refrigeration, steamfitter, and fire sprinkler work throughout Hawaii.

Our Association is **strongly opposed** to Section 14 of HB1385, which eliminates the requirement for bidders to provide the nature and scope of work to be performed by each person or firm to be engaged by the bidder as a subcontractor in the performance of the contract.

Elimination of the "nature and scope of work" requirement would further expose subcontractors to the unethical practice of bid shopping, as there would be no way for the procurement officer, listed subcontractor, other bidders, and stakeholders to determine which portion of work the listed subcontractor is performing. This void of information would then allow bidders to list the names of numerous subcontractors with overlapping licenses who could then be shopped against each other.

For example, in our industry we have many subcontractors who each hold multiple specialty licenses in areas such as plumbing, air conditioning, fire sprinkler, boiler, refrigeration, etc., and under this proposed bill, a bidder could list the names of several of these subcontractors without having to designate the scope of work for which they have been engaged, allowing the bidder to then shop these listed subcontractors against each other.

Bid shopping reduces quality on the job, discourages competition, artificially inflates prices, and promotes unfair and unethical practices, therefore we strongly encourage this committee to remove Section 14 of HB1385.

Thank you for this opportunity to provide our testimony.

Respectfully yours,

Gregg S. Serikaku  
Executive Director



February 4, 2021

**TO:** House Committee on Government Reform  
**FROM:** Blake Parsons, Executive Director  
**SUBJECT:** Opposition to *HB1385*

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. 1385.**

The listing of subcontractors and the nature and scope of the work to be performed by each is an essential tenet of the State Procurement Code. The removal of the requirement to list the nature and scope of the work to be performed would gut the subcontractor listing requirement as it would not provide agencies the ability to assess if a bidder is using properly licensed subcontractors to perform appropriate work. Simply listing the subcontractors would not be useful to the contracting officer.

On the contrary to the state procurement office's review of Hawaii procurement laws, the final report from the 2013 legislature-sanctioned Procurement Task Force, which consisted of general contractors, subcontractors, labor, and state and city department representatives noted that the total cost increases due to subcontractor listing protest issues were only 0.06% and 0.34%. This report was compiled with data from four government agencies of all construction projects in 2013 and 2014.

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)*

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.

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.

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