

Testimony of the Contractors License Board

**Before the
House Committee on Finance
Thursday, February 24, 2022
11:00 a.m.
Via Videoconference**

**On the following measure:
H.B. 1908, H.D. 2, RELATING TO PROCUREMENT**

Chair Luke and Members of the Committee:

My name is Neal Arita, and I am the Legislative Committee Chairperson of the Contractors License Board (Board). The Board offers comments on this bill.

The purposes of this bill are to: (1) allow bidders to clarify or correct immaterial or technical information required as part of a bid submission for up to twenty-four hours after the bid submission deadline, in addition to the time for correction or withdrawal of inadvertently erroneous bids before or after the award as permitted by rules adopted by the procurement policy board; (2) require that bids for construction be opened no sooner than twenty-four hours after the deadline for the submission of bids; and (3) define “immaterial or technical information.”

Although the Board appreciates the language as amended in the H.D. 2, it prefers the proposed language in S.B. 2681, S.D. 2, as this version is consistent with the requirements of Hawaii Revised Statutes chapter 444 and the Board’s longstanding interpretation that a person must be licensed as a contractor at the time of submitting a proposal or bid (as well as at the time of award) on a construction project.

Thank you for the opportunity to testify on this bill.

HB-1908-HD-2

Submitted on: 2/23/2022 8:38:20 AM

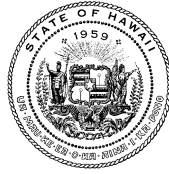
Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Neal Arita	Contractors License Board	Comments	Yes

Comments:

Present to provide comments via Zoom.

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
FINANCE

FEBRUARY 15, 2022, 2:00 P.M.
VIA VIDEOCONFERENCE, STATE CAPITOL

H.B. 1908, H.D. 2

RELATING TO PROCUREMENT

Chair Luke, Vice Chair Yamashita, and Members of the Committee, thank you for the opportunity to submit testimony on H.B. 1908, H.D. 2. The Department of Accounting and General Services (DAGS) opposes this bill and offers the following comments.

This bill increases the responsibilities of procurement agencies by inserting an additional bidding step and creating two bidding deadlines (bid receipt, then bid opening) requiring administering as well as additional potential interpretation of “immaterial or technical information” for corrections.

Section 103D-302, Hawaii Revised Statutes, already allows that bids that do not comply with the sub-list requirement may be accepted if acceptance is in the best interest of the state and the value of the work to be performed is equal to or less than one percent of the total bid amount.

The added clause on Page 5, lines 3 -8, which states, “...provided further that the twenty-four hour period shall be complementary and in addition to the time for correction or withdrawal

of inadvertently erroneous bids before or after award, as permitted in accordance with rules adopted by the policy board pursuant to section 103D-302 (g),” is duplicative and unnecessary as it further exacerbates the review and evaluation of bids for award. Section 103D-302 (g) already allows reasonable time for correction of inadvertently erroneous bids. Why would bidders need an additional 24 hours beyond that?

Further, the description of “immaterial or technical information” provided on page 9 would not cover the bill’s examples of technical mistakes listed in this bill on pages 1 and 2 that it may have been intended to address: “...bidder 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.”

DAGS believes contractors’ demonstration of their capacity to perform begins with assembling their bids in a manner to ensure timely, complete, and accurate submittal information by the bid opening deadline. The insertion of a “buffer” time period to allow for corrections further enables bidders to wait until the last minute to assemble their bids without taking extra time to ensure their submittals are suitably finalized.

Thank you for the opportunity to submit testimony on this matter.



STATE OF HAWAII
STATE PROCUREMENT OFFICE

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 586-0554
email: state.procurement.office@hawaii.gov
<http://spo.hawaii.gov>

TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
FINANCE
FEBRUARY 24, 2022; 11:00 a.m.

HOUSE BILL 1908, HD2
RELATING TO PROCUREMENT

Chair Luke, Vice Chair Yamashita, and members of the committee, thank you for the opportunity to submit testimony on House Bill 1908, HD2. The State Procurement Office (SPO) opposes the language that would allow bidders twenty-four (24) hours, AFTER the bid due date/time, to submit corrected bids. These 24 hours are in addition to the time already provided in the Hawaii Administrative Rules to make corrections.

The SPO provides the following comments:

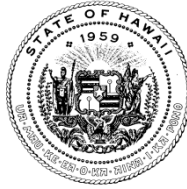
- Section 3-122-31(c)(1), Hawaii Administrative Rules allows for corrections for transposition, typographical and arithmetical errors, or other mistakes such as missing signatures that is a minor informality which does not affect price, quantity, delivery, or contractual conditions.
- Section 3-122-31(c)(1)(C), Hawaii Administrative Rules, further allows the procurement officer to waive or correct mistakes if it is in the best interest of the State.
- The 24-hour allowance will add another step in the procurement process
- The 24-hour allowance will add another component for which bidders can protest.
- The 24-hour allowance takes away the agency's latitude to allow for corrections without time constraints.
- This bill would impede the effectiveness for agencies to move forward, as it would have to wait 24 hours, AFTER the bid due date, to open all bids, regardless if errors may be detected.
- It is unfair to bidders who submitted accurate and timely responses.
- The bill addresses only construction and does not consider goods and services, procured by chapter 103D-302, HRS, the same benefits.
- The bill does not address bid shopping as intended.

In the competitive sealed bidding process, ten (10) days is the minimum required time for solicitations to remain open. However, for construction bids the average solicitation time is 30-45 days, which should be sufficient time for bidders to gather the necessary information from subcontractors to submit a complete and accurate bid, without having to resort to an additional 24 hours to correct mistakes.

Consequently, the bill is not necessary and only adds to the complexity of construction procurement.

Thank you.

DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROSS M. HIGASH
EDUARDO P. MANGLALLAN
PATRICK H. MCCAIN
EDWIN H. SNIFFEN

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

February 24, 2022
11:00 A.M.
State Capitol, Teleconference

**H.B. 1908, H.D. 2
RELATING TO PROCUREMENT**

House Committee on Finance

The Department of Transportation (DOT) offers **comments** on the bill which proposes to minimize bid challenges, costs, and delays on public works construction projects for two years by allowing bidders of public works construction projects to clarify and correct immaterial or technical issues with subcontractor listings for up to twenty-four hours after the bid submission deadline – provided that any additions or substitutions of listed joint subcontractors shall be prohibited, including changes to the nature and scope of work as listed, provided further that the twenty-four hour period shall be complementary and in addition to the time for correction or withdrawal of inadvertently erroneous bids before or after award, as permitted in accordance with rules adopted by the policy board pursuant to Section 103D-302(g); further, the previously-stated content does not abrogate or modify, and shall not be construed or deemed to abrogate or modify, the authority of the regulated industries complaints office of the department of commerce and consumer affairs and contractors license board to enforce Chapter 444; requiring that bids for construction shall be publicly opened no sooner than twenty-four hours after the bid submission deadline; and defining immaterial or technical information to mean an irregularity or abnormality that, as a matter of form, does not affect substance or an inconsequential variation that has no, little, or trivial effect on the procurement process and is not prejudicial to other vendors. The meaning of immaterial or technical information includes a missing signature, typographical errors, an error resulting from an inaccuracy or omission; and a listed subcontractor whose license at bid time had been suspended or forfeited due solely to a ministerial act, pursuant to Chapter 444 and provided that by the time of award, the subcontractor's license is reinstated.

The competitive sealed bidding or invitation for bid (IFB) method of procurement, as the default method, is structured with the intent to ensure fair, ethical, and open bidding opportunities with award to the lowest responsive and responsible bidder. The procurement requirements outline reasonable timelines for advertising, amendments by means of addenda, pre-bid conferences for added clarification and information, and a designated date and time for public bid opening. These guidelines serve to optimally

create a procurement environment for fair and ethical competition and bids are evaluated through an objective and measurable process.

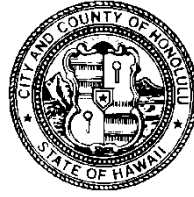
Bidders respond to publicly advertised solicitation(s) freely, mindfully, and intentionally. Further, when a bidder responds to an advertised solicitation, the bidder has committed to and bears the responsibility of fulfilling the bidding requirements of the solicitation, to include adherence to bid specifications and provisions with respective timelines. Given the designated date and time explicitly outlined in the bid documents for public reading or electronic opening, it is the bidder's sole responsibility to prepare their bids adequately, diligently, and accurately for submission by the designated deadline.

Further, the current requirement of bidders to submit a sealed bid for public bid opening at the designated date and time ensures no external handling of the bid document prior to public opening. The bid opening conducted as outlined in the procurement code gives bidders a level of assurance and transparency that their bid proposals are opened and read as intended and submitted. The bid opening process, from sealed bid submittal to public opening, is key to avoid any possible misperception of compromise to the integrity of the process. By allowing the additional twenty-four hours to correct and clarify non-material or technical information results in submittal of two bids, one to meet the original bid submittal deadline and the second with corrections. The logistics of securely and appropriately managing the multiple bids creates a burden on the State in conducting the bid opening to ensure the corrected bid documents are accurately changed out for the public reading. More importantly, the additional handling by the State of the bidder's proposal document may introduce the potential for inaccurate and false speculation and accusations by bidders to find fault with the submitted bid and hold the State accountable, should there be an unfavorable result with the bid evaluation and contract award.

The proposed twenty-four hour extension of the public bid opening of sealed bids after the bid submission deadline for purposes of clarifying and correcting bid issues creates the potential of issues like bid shopping for subcontractor listing and dilutes the responsibility factor of the bidder in preparing an acceptable bid by the designated deadline.

Thank you for the opportunity to provide testimony.

RICK BLANGIARDI
MAYOR



ANDREW T. KAWANO
DIRECTOR

CARRIE CASTLE
DEPUTY DIRECTOR

TESTIMONY OF ANDREW T. KAWANO
DIRECTOR OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
BEFORE THE HOUSE COMMITTEE ON FINANCE
February 24, 2022, 11:00 AM, Conference Room 308 and Videoconference

TO: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

RE: OPPOSITION OF HOUSE BILL 1908, HD2, RELATING TO PROCUREMENT

The Department of Budget and Fiscal Services, City and County of Honolulu (City), **strongly opposes** House Bill (HB) 1908, HD2, Relating to Procurement.

A bidder is responsible for submitting an accurate bid by the date and time, and at the location as specified in the solicitation. In the event a bid contains incorrect "immaterial or technical information," the Hawaii Revised Statutes (HRS) 103D-302(g) and the Hawaii Administrative Rules (HAR) §3-122-31 already allow for an obvious mistake in a bid to be corrected, withdrawn or waived to the extent it is not contrary to the best interest of the purchasing agency or to the fair treatment of other bidders.

The City is not aware of any recent situation where a bidder was rejected only due to an immaterial error. The proposed changes will lead to more protests and additional time and costs to the City.

Furthermore, the proposed language in Section 2, HRS 103D-302(j), lines 15 through 19, should be removed, as it appears to violate HRS Chapter 444 and contradict DCCA Office of Administrative Hearings case PCX-2011-005 that a bidder (and/or its subcontractors) must be properly licensed at the time of bid submission.

For the reasons stated above, the City respectfully opposes House Bill 1908, HD2.

Mahalo for the opportunity to testify on this bill. Should you have any questions or concerns, please feel free to contact the Department of Budget & Fiscal Services' Division of Purchasing at 808-768-5535 or bfspurchasing@honolulu.gov.

SAH - Subcontractors Association of Hawaii

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

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

February 24, 2022

Testimony To: House Committee on Finance
Representative Sylvia Luke, Chair
Representative Kyle T. Yamashita, Vice Chair

Presented By: Tim Lyons, President

Subject: H.B. 1908, HD 2 – RELATING TO PROCUREMENT

Chair Luke, Vice Chair Yamashita 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 support the intent of this bill.

This Committee may be aware that the subject of subcontractor listing has been one that has been around for several years and both sides are fairly set in their positions. The language in this bill tends to work towards a solution of what general contractors say is insufficient time as they put their bids together in order to check over the information and be sure they have not made an error. We are not sure that we would subscribe to that theory because we think that anytime a company is submitting a bid, it needs to be sure of the accuracy contained in it including the listing of subcontractors. However, with the parameters that are specified in this bill and in the "spirit of cooperation", we can support the intent.

We would further respectfully ask the Committee to honor the two (2) year sunset clause as contained in HD 1. This is an extremely important area to the financial health of subcontractors and while we hope it satisfies the generals, we respectfully request a trial run and to that extent, please keep the sunset clause. We ask that the Committee not indulge in any other changes that might alter the specificity of this particular version inasmuch as the versions have been worked on for several years and a deviation from that, we believe would be in bad faith.

Thank you.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcawhawaii.org
Website: www.gcawhawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 23, 2022

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE KYLE T. YAMASHITA, VICE CHAIR, COMMITTEE ON FINANCE

SUBJECT: **SUPPORT OF H.B. 1908 H.D.2, RELATING TO PROCUREMENT.** Allows bidders to clarify or correct immaterial or technical information required as part of a bid submission for up to twenty-four hours after the bid submission deadline, in addition to the time for correction or withdrawal of inadvertently erroneous bids before or after the award as permitted by rules adopted by the procurement policy board. Requires that bids for construction be opened no sooner than twenty-four hours after the deadline for the submission of bids. Defines "immaterial or technical information". Repeals 6/30/2024.

HEARING

DATE: Thursday, February 24, 2022
TIME: 11:00 a.m.
PLACE: Capitol Room 308

Dear Chair Luke, Vice Chair Yamashita 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. 1908 H.D.2, which allows bidders to clarify or correct immaterial or technical information required as part of a bid submission for up to twenty-four hours after the bid submission deadline.

This measure 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.

Under this part, 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 bill 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 will result in more complete and accurate bid submittals and reduce the number of potential bid protests.

This would be very similar to California’s process and was included as an unofficial suggestion in the independent report submitted by the State Procurement Office. The report can be found here: https://spo.hawaii.gov/wp-content/uploads/2020/01/CPPR-Report_HR142-SLHL-2016-FINAL_01-13-20.pdf

The relevant portion starts on page 111 and the suggestion to adopt a variation of California’s model, which allows a 24-hour period to correct errors appears at the bottom of page 114 of the report. Further, the report specifies that in 2018, subcontractor listing accounts for over 60% of all construction related bid protests and that 45% of all protests the State received (including all protests related to non-construction) alleged a defect in the listing of subcontractors for a construction project.

The definition of “immaterial or technical information” is modeled after Utah’s Procurement Code. They define the term “immaterial error”: https://le.utah.gov/xcode/Title63g/Chapter6a/C63G-6a_1800010118000101.pdf

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

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

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

February 23, 2022

Representative Sylvia Luke, Chair
House Committee on Finance
415 South Beretania Street
Honolulu, Hawaii 96813

Re: House Bill 1908, HD2(Relating To Procurement)
Hearing date: February 24, 2022
Time: 11:00 a.m.

Dear Chair Luke 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 **opposition** to House Bill 1908, HD2. The aforesaid organizations are labor management cooperation funds between the Painters Union, Tapers Union, Glaziers Union, and Carpet and Soft Tile Layers Union and their signatory contractors.

As an initial matter, we strongly disagree with statements in Section 1 of the Bill finding that the subcontractor listing requirement of the procurement laws, "has the unintended consequence of increasing the number and complexity of construction protests." The foregoing implies that subcontractor listing is a significant problem causing delays and increased cost for public construction projects. A task force convened pursuant to Senate Concurrent Resolution 92, S.D.2 (2013) studied the issue of bid protests related to subcontractor listing. The 16 page report and 91 pages of attachments can be found online at the Department of Accounting and General Services' website at:

<https://ags.hawaii.gov/wp-content/uploads/2012/09/ProcurementTaskForceReportLS2013.pdf>

In the report, the Task Force found that, in general, bid protests did **not** result in any significant delays or increased costs. See Task Force Report at 8-9. The work of the Task Force revealed that protests related to the subcontractor listing requirement increased costs to the State by 0.06% in FY2013 and 0.34% in FY2014. See id. at 13. The Task Force, which included the Comptroller, the Department of Accounting and General Services, the State Procurement Office and other procurement agencies as participants, recommended no changes be made to Chapter 103D with respect to the subcontractor listing requirement. See id. at 10-11.

The second reason for our opposition to this measure is that amending the Procurement Code to allow clarification or correction of non-material or technical information contained in or information omitted from a bid is entirely unnecessary, because such corrections are already expressly allowed under Hawaii Revised Statutes §103D-302(g). That section provides in pertinent part:

Correction or withdrawal of inadvertently erroneous bids before or after the award, or cancellation of invitations for bids, awards, or contracts based on such bid mistakes **shall be permitted** in accordance with rules adopted by the policy board.

[Emphasis added]. Because the Procurement Code already expressly permits bid corrections, there is absolutely no need for this Bill.

Enacting this Bill, which creates entirely new terms and procedures not currently used in the Procurement Code, will only lead to more confusion in the procurement process. The language added in previous House drafts makes no sense in relation to the existing subsection (g), and does nothing to clear up confusion over which section should control. As it is written, this measure will only encourage an aggrieved bidder to file a lawsuit seeking clarification over which statute controls and/or the meaning of each section.

In short, it is bad policy to pass legislation that duplicates existing law in a manner which will only cause more confusion and protests. If the Committee insists on passing this measure through, we ask that it at least consider: 1) removing Section 1 entirely; and 2) relocating the language detailing the circumstances under which a change may be made from HRS §103D-302(b) to HRS §103D-302(g).

For all of these reasons, we respectfully ask that the Committees defer this Bill indefinitely. In the alternative, any new statutory language should properly be added to HRS §103D-302(g). Thank you again for this opportunity to share our **opposition** to this measure.

Jeffrey S. Masatsugu



**HOUSE COMMITTEE ON FINANCE
State Capitol, Via Videoconference
415 South Beretania Street
11:00 AM**

February 24, 2022

RE: HB 1908, RELATING TO PROCUREMENT

Chair Luke, Vice Chair Yamashita, and members of the committee:

My name is Daryl Takamiya, 2022 President 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. Our members build the communities we all call home.

BIA Hawaii is in support of the intent of HB 1908, Relating to Procurement. This bill would allow bidders to clarify or correct immaterial or technical information required as part of a bid submission for up to twenty-four hours after the bid submission deadline, in addition to the time for correction or withdrawal of inadvertently erroneous bids before or after the award as permitted by rules adopted by the procurement policy board.

As this bill represents common ground in attempting to lower bid protests, we are in support of this effort. Increasing efficiency in the bid process is in the best interest of the state, as it will lower risk and cost.

Thank you for the opportunity to comment on this matter.