



**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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

TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
WAYS AND MEANS
FEBRUARY 24, 2021, 10:00 A.M.

SENATE BILL 788, SD1
RELATING TO PROCUREMENT

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 788, HD1. The State Procurement Office (SPO) offers the following comments and recommendations.

Comments:

The State Procurement Office has identified multiple bills with similar language and prefers the language in House Bill 526, HD1. HB526, HD1 has a more inclusive statement to include necessary steps to implement the use of Past Performance.

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.

Recommendation:

Creating the tools and infrastructure for buyers to adopt a new policy is essential for successful implementation. In order to continue this work, the SPO is requesting time and funding. Time is required to verify and implement rules, begin creating the database, develop training, and coordinate and execute the training. The SPO is requesting one-time initial funding of \$164,000 pretax to develop and implement the guidance and related implementation training to cover at least the first two years, and annual maintenance funding of \$13,500 to develop the following tools:

	Delivery	Funding Request
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
	Total One Time Funding	\$150,500
7	Annual Database Maintenance (est. at 27% of cost of \$50,000)	13,500
	Total Funding Recurring Annually	13,500

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 5 and 6, 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, STATE COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
COMMITTEE ON WAYS AND MEANS

WEDNESDAY, FEBRUARY 24, 2021, 10:00 A.M.
CONFERENCE ROOM 211, STATE CAPITOL

S.B. 788, S.D. 1

RELATING TO PROCUREMENT.

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the Committee, thank you for the opportunity to submit testimony supporting the intent of S.B. 788, S.D. 1, with comments. The Department of Accounting and General Services (DAGS) appreciates the intent of improving procurement practices but has strong concerns about the requirements of this legislative bill.

S.B. 788 S.D. 1 reduces the transparency of the procurement process, increases subjectivity, and reduces the responsiveness and responsibility expectations of bidders, thereby increasing the likelihood of protests, and causing delays in the procurement process:

- For Part III, the consideration of past performance introduces an element of subjectivity to the construction procurement process, which is increased when an agency is forced to rely on an indirect assessment from multiple agencies. In the current economic climate, agencies also lack staffing and time to properly implement the proposed measure to

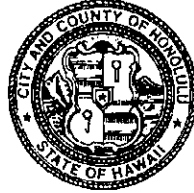
support maintaining a fair, transparent past performance rating database and the ensuing protests.

- For Part IV, it appears the intent is to provide for two conditions to allow the state to negotiate bid awards. One if all bids exceed the available funds, with qualifying requirements. The other if the lowest responsive and responsible bid significantly differs from the State's predetermined construction cost estimate. The second alternative presumes that the State's cost estimate is accurate and adequate for the intended scope of work. In truth the State's cost estimate is just that: an estimate based on what is known at the time of assembling the bid package, which is subject to many impacts beyond the State's control that may cause variation in the cost. This premise also creates a bidding arena that allows for gaming bids. Several objectionable scenarios may ensue:
 - If the State's estimate is too low, the project scope will be cut, regardless of the funding available to achieve the project intent.
 - If the State's estimate is too high, the state may end up paying more for work.
 - If the bidders all underbid in hopes of being chosen to negotiate a better price for the scope, it's not clear that we are selecting responsive, responsible bidders who are competent to perform the work. The amount of "correction" will also be limited to the next low bidder's price. This may also result in cutting project scope unnecessarily if funds are available.
- For Part V, the subcontractor listing requirement was enacted with the intent of precluding bid shopping. The proposal to allow a 24-hour period for bidders to correct their subcontractor listings provides bidders with a 24-hour period during which to bid shop. It artificially extends the bid deadline to allow bidders to make corrections, rather than the current process which expects bidders to be disciplined in the formation of their bids. This is unfair for those bidders who already are responsive and responsible in the

development of their bid submittals. In addition, not submitting accurate bids by the original deadline also creates uncertainty and a potential future concern of the bidder's ability to perform and meet deadlines if the contract is awarded to them.

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

RICK BLANGIARDI
MAYOR



ANDREW T. KAWANO
DIRECTOR

KELLI J. NISHIMURA
ACTING DEPUTY DIRECTOR

TESTIMONY OF ANDREW T. KAWANO
DIRECTOR OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS
February 24, 2021, 10:00 a.m., Conference Room 211

TO: The Honorable Donovan M. Dela Cruz, Chair
and Members of the Senate Committee on Ways and Means

RE: OPPOSITION OF SENATE BILL 788, RELATING TO PROCUREMENT

The Department of Budget and Fiscal Services, City and County of Honolulu, **opposes** Senate Bill No. 788, Relating to Procurement.

Past Performance

Current procurement law already allows for consideration of past performance as an evaluating criterion to determine an offeror's responsibility. Requiring past performance will cause delays in the procurement process. Delays would stem from protests due to the determination made by each evaluation and will increase the costs to the procurement.

Negotiations

Currently, HRS 103D-302(h) allows for negotiations with the lowest responsible, responsive offeror in the event all bid prices exceed available funds and economic considerations preclude resolicitation of the reduced scope of work.

Reducing (or increasing) a bid amount through negotiations if they *significantly* differ from the amount estimated for that construction project would contemplate a material change in the procurement and could lead to more protests and complaints. All offerors must be afforded the same fair and transparent opportunities when bidding on a project.

Correction of Non-Material or Technical Information

There should be a clear definition of "non-material" or "technical" information. The offeror may feel that replacing a subcontractor is non-material because it does not affect their offered price, quantity and/or delivery. The proposed language may lead to further complaints and protests.

In summary, the Department of Budget and Fiscal Services for the City and County of Honolulu respectfully opposes Senate Bill No. 788 for the following reasons:

1. current procurement law already allows for consideration of past performance;
2. significant negotiations do not allow for a fair and transparent bidding process; and
3. allowing contractors to correct non-material or technical information after bid submission may lead to more protests.

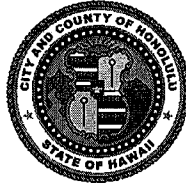
Mahalo for the opportunity to testify on this bill. Should you have any questions or concerns, please feel free to contact the Department of Budget & Fiscal Services' Division of Purchasing at 808-768-5535 or bfspurchasing@honolulu.gov.

DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 11TH FLOOR
HONOLULU, HAWAII 96813
Phone: (808) 768-8480 • Fax: (808) 768-4567
Web site: www.honolulu.gov

LATE

RICK BLANGIARDI
MAYOR



ALEX KOZLOV, P.E.
DIRECTOR

HAKU MILLES, P.E.
DEPUTY DIRECTOR

February 22, 2021

The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice-Chair
and Members of the Committee on Ways and Means
The Senate
State Capitol, Conference Room 211
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Dela Cruz, Vice-Chair Keith-Agaran, and Members:

SUBJECT: Senate Bill No. 788 SD1
Relating to the Procurement

The Department of Design and Construction (DDC) respectfully **opposes** Section 9 of Senate Bill No. 788 SD1. Section 9 proposes to amend Hawaii Revised Statutes (HRS), Section 103D-310, subsection (b) to read, "...For the purpose of making a responsibility determination, the procurement officer shall possess or obtain available information sufficient to be satisfied that a prospective offeror meets the applicable standards, including consideration of past performance as it applies to a responsibility determination for the current solicitation..."

DDC primarily administers professional services and construction contracts. Existing law allows past performance to be considered prior to award for these types of contracts, so the proposed revision to HRS, Section 103D-310, subsection (b) would not improve the existing procurement process.

The proposed legislation would burden procurement and contract administration procedures with requirements that consume additional resources and potentially increase bid protests and contracting delays without commensurate benefits. DDC has implemented procedures that incorporate past performance into qualification of bidders for construction contracts. DDC uses these procedures for bid solicitations that are expected to be of interest to contractors that have recently exhibited poor performance on DDC contracts. By doing this, DDC is able to realize the benefits of considering past performance on an as-needed basis without burdening the majority of our solicitations

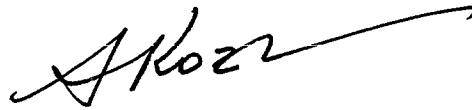
The Honorable Donovan M. Dela Cruz, Chair
and Members of the Committee on Ways and Means
February 22, 2021
Page 2

with the additional administrative effort that would be mandated by this proposed amendment and the potential for additional protests and delays that would need to be addressed.

Based on the above consideration, DDC respectfully **opposes** Section 9 of Senate Bill No. 788 SD1.

Thank you for the opportunity to express our opposition to Section 9 of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Kozlov', with a long horizontal flourish extending to the right.

Alex Kozlov, P.E.
Director

SAH - Subcontractors Association of Hawaii

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

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

February 24, 2021

Testimony To: Senate Committee on Ways and Means
Senator Donovan Dela Cruz, Chair

Presented By: Tim Lyons, President

Subject: S.B. 788, SD 1 – RELATING TO PROCUREMENT

Chair Dela Cruz 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 can generally support this bill but respectfully request an amendment.

The gist of this bill comes out of recommendations by a third party consultant hired by the State to study the procurement system.

This bill offers a change purportedly to address the area of protests. It is felt that general contractors are too busy prior to submittal of their bids to check and verify the information required to list their subcontractors (we disagree). By statute this information is specified as the name of the company and the nature and scope of their work. This bill allows them two (2) two hours after bid submittal to make corrections to their sub list.

We are fearful that this will open the way for possible bid shopping and bid chiseling, a practice all have condemned. The language in SD 1 needs additional clarification to limit the game playing that may occur.

In that light, we recommend that on page 16, line 19 we add the underscored:

(2) Allow the bidder to clarify or correct non-material or technical information required by paragraph (1) for up to twenty-four hours after the bid submission deadline; provided that any additions and/or substitutions of listed joint subcontractors are strictly prohibited.

With that amendment we can support the bill going forward.

Thank you for considering this amendment.



1088 BISHOP STREET #408
HONOLULU, HI 96813
PH: (808) 597-1216

GREGG S. SERIKAKU
EXECUTIVE DIRECTOR

February 22, 2021

Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Senate Committee on Ways and Means

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee:

SUBJECT: SB788 SD1 RELATING 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.

While we do understand the intent of the proposed allowance to correct non-material or technical information as a means to avoid frivolous protests, we do believe that additional language is needed to clarify the extent of these allowances. In this regard, our Association would like to recommend a revision to Part V, Section 14(b)(2) as follows:

(2) Allow the bidder to clarify or correct non-material or technical information required by paragraph (1) for up to twenty-four hours after the bid submission deadline, ***provided that any additions, substitutions, and/or changes to the nature and scope of work of the joint subcontractors listed at the time of bid shall be strictly prohibited.***

Any such additions, substitutions, or changes to the nature and scope of work of listed subcontractors should not be allowed, as these are the exact types of changes that would significantly increase the practice of bid shopping.

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 adopt the recommended language.

Thank you for this opportunity to provide our testimony.

Respectfully yours,

A handwritten signature in black ink that reads "Gregg S. Serikaku".

Gregg S. Serikaku
Executive Director



ELECTRICAL CONTRACTOR'S ASSOCIATION OF HAWAI'I

NECA Hawai'i Chapter

1286 Kalani Street, Suite B-203

Honolulu, Hawai'i 96817

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FX: (808) 841-8096

Email: ecah@ecahi.com



February 22, 2021

To: Senate Committee on Ways & Means
Honorable Chairperson Donovan M. Dela Cruz & Vice Chair Gilbert
S.C. Keith-Agaran

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

Subject: **SB 788, SD1, Relating to Procurement**

Notice of Hearing.

Date: Wednesday, February 24, 2021
Time: 10:00 PM
Place: Conference Room 211
State Capitol
415 South Beretania Street

Dear Chairperson, Dela Cruz, Vice Chairperson Keith-Agaran and
Committee members:

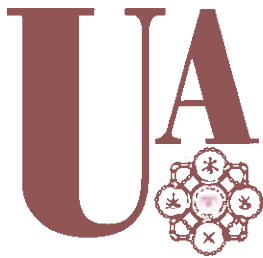
The Electrical Contractors Association of Hawaii (ECAH) is a non-profit
association representing over 100 electrical contractors doing business in
the State of Hawaii. ECAH is the Hawaii Chapter of the National

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, we submit the following comments:

The new additional language in Part IV, Section 12, paragraph 2(h)(2) allowing the head of the purchasing agency to negotiate with the lowest bidder to ensure that the bid amount is reasonable and realistic to the scope of the construction project and the amount estimated by the State for that project is not good policy as it will encourage bidders to “low ball” their bids in order to be the lowest bidder only to then negotiate a more realistic and reasonable amount. We question the intent and purpose of this new proposal because if the low bid is significantly different from the estimate by the State, either that estimate is flawed or the conditions have drastically changed since that estimate was calculated, i.e., price changes of components.

In Part V, Section 14(b)(2), the recommendation to clarify or correct non-material or technical information required by paragraph (1), for up to 24 hours after the bid submission deadline cannot include any changes to the original nature and scope of work submitted by the bidder for any joint contractor or sub-contractor. The intent of this new language must only be for minor clarifications and corrections.

We ask that this committee make the proposed changes to SB788, SD1 only with consideration and inclusion of the above comments. Thank you for the opportunity to provide testimony on this issue.



Founded 1889

PLUMBERS AND FITTERS LOCAL 675 UNITED ASSOCIATION



February 22, 2021

Senator Donovan Dela Cruz, Chair
Senator Gilbert Keith-Agaran, Vice Chair
Senate Committee on Ways and Means
State Capitol, 415 South Beretania Street, Video Conference
Honolulu, Hawaii 96813

Re: SB788 SD1 Relating To Procurement
Wednesday, February 24, 2021 at 10:00 am

Aloha Chair, Vice-Chair, and Committee Members;

Chartered in 1919, the Plumbers and Fitters UA, Local 675 is one of the oldest organized labor unions in Hawai'i and one of three 'licensed' skilled-construction trades, steeped in a rich history as one of Hawai'i's construction-industry pioneers.

The Plumbers and Fitters UA Local 675, limits our comments to Part V, Section 14(b)(2) of SB788 SD1 and respectfully proposes amendments to provisions which administratively allows bidders to clarify or correct non-material and technical information for up to twenty-four hours after the bid submission deadline, and further provides that bids for construction be opened no sooner than twenty-four hours after the deadline for the submission of bids.

SB788 SD1 Part V, Section 14(b)(2) as written may cause considerable harm by altering a long standing policy that has ensured Hawaii's procurement process and the use of public taxpayers dollars is done so fairly and objectively for all interested stakeholders. Modeled after the American Bar Association Model Procurement Code, the process requires that all bidders are "Responsive" and "**Responsible**". The subcontractor listing requirement has uncovered bidders unable to meet these requirements for one reason or another, and that may have otherwise gone unnoticed if not for the subcontractor listing requirement.

Not mentioned in a 2016 Report issued in response to House Resolution 142 (HR142), is that unlike Hawai'i's construction law(s), the federal government does not have licensing requirements. Also not mentioned in the Report is that the Task Force established pursuant to Concurrent Resolution 92 SD2 (2013) and recognized in HR142, after lengthy discussions from a cross-section of interested stakeholders, voted for no change to the subcontractor listing requirement.

Lastly, the term(s) non-material and technical information are undefined and unclear and may be interpreted and implemented incorrectly and/or inconsistently.



As such, we respectfully request the following amendments to Part V, Section 14(b)(2) of this measure as follows:

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]~~ shall:

(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 clarify or correct non-material or technical information required by paragraph (1) for up to twenty-four hours after the bid submission deadline.. provided that any additions, substitutions, and/or changes to the nature and scope of work of the joint subcontractors listed at the time of bid shall be strictly prohibited.-

Mahalo for the opportunity to testify.

- 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

HEARING BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS

Senate Bill 788, SD1 Relating To Procurement

Dear Chair Dela Cruz 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. 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.

We are in **strong opposition** to certain parts of Senate Bill 788, SD1. The parts we oppose would: 1) allow the government agency to negotiate increases or decreases in the bid amount of the lowest bidder as a routine matter (Part IV); and 2) allow a bidder on a public construction project up to one hour after the close of bids to "clarify and correct" its listing of subcontractors (Part V).

Allowing a procuring agency to negotiate the low bid price after its submission under vaguely defined circumstances instead of only in a very specific and limited circumstance could drastically increase the cost of delivering projects to the government as well as raise serious transparency issues, especially concerning negotiations to increase the bid amount. Such a process could encourage bidders to submit unrealistically low figures in the hope that it will win the award, then cure any actual deficiencies through the negotiation process. Our public procurement process for construction should not reward inefficiency in contracting, nor encourage gamesmanship in the process.

The second reason for our opposition to this measure is related to the unethical practice of bid shopping. This measure would allow the general contractor one hour after the close of bids to make changes to the bid, but does not specify what "non-material or technical issues with subcontractor listings" may be "clarif[ied] and correct[ed]." This vague language seems to open the door to changing the names of the subcontractors listed and/or the nature and their scope of work. Such a change would give the general contractor more than enough time to bid shop its listed subcontractors. Even Ikasco Consulting, the third-party which conducted the review requested by the State Procurement Office referenced in Section 1 of the Bill, found that "a delay of even an hour is still ample time to bid shop" and recommended **against** amending Hawaii's procurement laws to allow such a delay. See Construction Procurement Policy Review Findings and Recommendations Report at 116.

For all of these reasons, we respectfully ask that the Committee delete Parts IV and V of the bill. We take no position regarding those provisions of the bill involving design professionals and those provisions which establish and mandate the use of a past performance database.

Thank you again for this opportunity to share our **opposition** to this measure.

IRON WORKERS STABILIZATION FUND

February 24, 2021, 10 am

Committee on Ways and Means
Senate
Via Videoconference
State Capitol
415 South Beretania Street

Re: SB788 SD1 - RELATING TO PROCUREMENT.


Aloha Chair Donovan Dela Cruz, Vice-Chair Gilbert S.C. Keith-Agaran, and members of the Senate Committee on Ways and Means:

We **OPPOSE** SB788 SD1 **unless amended**. This bill, if enacted, proposes to implement certain recommendations of the procurement policy review conducted pursuant to House Resolution No. 142, Regular Session of 2016, allow a bidder to clarify and correct non-material or technical issues with subcontractor listings for up to twenty-four hours after the bid submission deadline, requires that bids for construction be publicly opened no sooner than twenty-four hours after the bid submission deadline.

We support the creation of vendor performance information system or a procurement database that tracks past performance of contractors. We support the requirement to have contractor past performance be considered by the procurement officer in the bid selection process. The statewide database will allow for tracking of the performance of contractors which will in turn empower procurement officers to make better choices with our tax payer dollars.

We do not support tampering with the contractor or subcontractor list after bid submittal. Prime contractors should not be allowed to bid shop or bid chisel after submission of their bid. The prime contractor should be sufficiently prepared to submit a complete bid, with listed joint-contractors and sub-contractors, prior to the bid deadline.

Sincerely,



T. George Paris
Managing Director

TGP: MP



INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS

Affiliated with A.F.L.-C.I.O.

LOCAL UNION NUMBER 625

94-497 UKEE STREET • WAIPAHU, HAWAII 96797

T.G. Paris
President Emeritus

February 24, 2021 – 10 am
Senate
Via Videoconference
State Capitol
415 South Beretania Street

Re: SB788, SD1 – RELATING TO PROCUREMENT.

Aloha Chair Donovan Dela Cruz, Vice-Chair Gilbert Keith-Agaran, and members:

We **OPPOSE** SB788 SD1 unless amended. This bill, if enacted, proposes to implement certain recommendations of the procurement policy review conducted pursuant to House Resolution No. 142, Regular Session of 2016, allow a bidder to clarify and correct non-material or technical issues with subcontractor listings for up to twenty-four hours after the bid submission deadline, requires that bids for construction be publicly opened no sooner than twenty-four hours after the bid submission deadline.

We support the creation of vendor performance information system or a procurement database that tracks past performance of contractors. We support the requirement to have contractor past performance be considered by the procurement officer in the bid selection process. The statewide database will allow for tracking of the performance of contractors which will in turn empower procurement officers to make better choices with our tax payer dollars.

We do not support tampering with the contractor or subcontractor list after bid submittal. Prime contractors should not be allowed to bid shop or bid chisel after submission of their bid. The prime contractor should be sufficiently prepared to submit a complete bid, with listed joint-contractors and sub-contractors, prior to the bid deadline. Our union stands in solidarity with subcontractors that would be negatively affected by bid shopping and bid chiseling.

Sincerely,



Joseph O'Donnell
Business Manager/Financial-Secretary Treasurer

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



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 23, 2021

TO: HONORABLE DONOVAN DELA CRUZ, CHAIR, HONORABLE GILBERT S.C. KEITH-AGARAN, VICE CHAIR, COMMITTEE ON WAYS AND MEANS

SUBJECT: **PROVIDING COMMENTS ON S.B. 788 S.D.1, RELATING TO PROCUREMENT.** Implements certain recommendations of the procurement policy review conducted pursuant to House Resolution No. 142, Regular Session of 2016. Allows a bidder to clarify and correct non-material or technical issues with subcontractor listings for up to twenty-four hours after the bid submission deadline. Requires that bids for construction be publicly opened no sooner than twenty-four hours after the bid submission deadline.

HEARING

DATE: Wednesday, February 24, 2021
TIME: 10:00 a.m.
PLACE: Capitol Room 211

Dear Chair Dela Cruz, Vice Chair Keith-Agaran 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 S.B. 788 S.D.1, which implements certain recommendations of the procurement policy review conducted pursuant to House Resolution No. 142, Regular Session of 2016, including allowing a bidder to clarify and correct non-material or technical issues with subcontractor listings for up to twenty-four hours after the bid submission deadline and requires that bids for construction be publicly opened no sooner than twenty-four hours after the bid submission deadline.

GCA is in opposition to part III of this measure and believes that the language could have the unintended consequence of increasing administrative costs, creating additional bureaucracy, and increasing the number of protests. Past performance introduces a considerable amount of subjectivity that will result in increased protests. GCA agrees with DAGS testimony on past performance (See SB1017 and HB526).

GCA is in strong 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.

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 proposed amendment 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.

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