



STATE OF HAWAII | KA MOKU'ĀINA O 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, ADMINISTRATOR
STATE PROCUREMENT OFFICE**

**TO THE HOUSE COMMITTEE
ON
CONSUMER PROTECTION & COMMERCE
FEBRUARY 4, 2025, 2:00 PM**

**HOUSE BILL 809
RELATING TO PROCUREMENT**

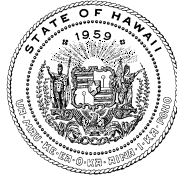
Chair Matayoshi, Vice Chair Chun, and members of the committee, thank you for the opportunity to submit testimony on House Bill 809, which amends Section 103D-302 - Competitive sealed bidding, Hawaii Revised Statutes (HRS), to allow bidders to clarify or correct immaterial or technical information required 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 (PPB). It also requires that bids for construction be opened no sooner than twenty-four hours after the deadline for the submission of bids and defines "immaterial or technical information."

The State Procurement Office (SPO) opposes this bill because it is not necessary, as mistakes in bids are already addressed in statute and rules. If there is a mistake in a bid, Section 103D-302(g), HRS, states that the correction or withdrawal of inadvertently erroneous bids before or after 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 PPB. Furthermore, Section 3-122-31(c), Hawaii Administrative Rules (HAR), addresses mistakes in bids, such as missing signatures or typographical errors, discovered after the deadline for receipt of bids but prior to award. Additionally, the procurement officer may correct or waive obvious mistakes to be corrected or waived if this is in the best interest of the purchasing agency and that it is fair to other bidders, without a specific time limit.

It is not necessary to allow a bidder on a construction project to clarify and correct information up to twenty-four hours after bid closing and mandate a twenty-four-hour waiting period after bid closing before construction bids can be opened. It is the responsibility of contractors and subcontractors to ensure that their bid responses are accurate and conform to the requirements of the solicitation. The addition of language intended to fix inadvertent errors instead adds complexity, delays to the procurement process, and opportunity for protest.

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

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



KEITH A. REGAN
COMPTROLLER
KA LUNA HO'OMALU HANA LAULĀ

MEOH-LENG SILLIMAN
DEPUTY COMPTROLLER
KA HOPE LUNA HO'OMALU HANA LAULĀ

STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES | KA 'OIHANA LOIHELU A LAWELAWÉ LAULĀ
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
KEITH A. REGAN, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE COMMITTEE ON

CONSUMER PROTECTION & COMMERCE

FEBRUARY 4, 2025, 2:00 P.M.
CONFERENCE ROOM 329 AND VIA VIDEOCONFERENCE, STATE CAPITOL

H.B. 809

RELATING TO PROCUREMENT

Chair Matayoshi, Vice Chair Chun, and Members of the Committee, thank you for the opportunity to submit testimony on H.B. 809, which would allow a 24-hour period after the bid submission deadline to provide additional time for the correction of immaterial and technical information in the subcontractor listing and require that the opening of bids be delayed by 24 hours after the bid submission deadline.

The Department of Accounting and General Services (DAGS) **opposes** this bill for the following reasons:

- The current procurement code allows for the correction of certain types of errors which we believe addresses the concern being addressed by the amendment.
- Based on our experience, we believe the proposed changes will have

unintended negative consequences such as:

- Increasing the complexity of the procurement process for construction thereby adding to cost and delays.
- Increasing the administrative burden on procurement agencies, at a time when agencies are experiencing staffing shortages and the elimination of positions, by requiring them to determine whether each correction submitted during the 24-hour period is permissible.
- It introduces the possibility of errors in processing by agencies to address corrections during the bid opening process.
- The proposed changes will likely also provide additional reasons to protest subcontractor listings because:
 - The definition of 'immaterial or technical information' creates additional areas which are subject to interpretation.
 - It reduces the transparency of the procurement process.

We are also concerned that this proposal may be contrary to the overall goal of improving the quality of contractors on construction projects. The State needs contractors who are able to propose and enact viable solutions when problems arise during construction while also effectively managing their time and resources. This bill proposes to facilitate the award of government agency construction contracts to bidders who are unable to effectively troubleshoot their own bidding processes and effectively manage their resources to submit timely, complete, and accurate bids.

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



February 4, 2025

TO: HONORABLE SCOTT Z. MATAYOSHI, CHAIR, HONORABLE CORY M. CHUN, VICE CHAIR, COMMITTEE ON CONSUMER PROTECTION AND COMMERCE.

SUBJECT: **SUPPORT OF H.B. 809, 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. 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 6/30/2027.

HEARING

DATE: Tuesday, February 4, 2025
TIME: 2:00 p.m.
PLACE: Capitol Room 329

Dear Chair Matayoshi, Vice Chair Chun 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. 809, 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. 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 6/30/2027.

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

SAH - Subcontractors Association of Hawaii

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

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

February 4, 2025

Testimony To: House Committee on Consumer Protection & Commerce
Representative Scot Z. Matayoshi, Chair

Presented By: Tim Lyons, President

Subject: H.B. 809 – RELATING TO PROCUREMENT.

Chair Matayoshi and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The SAH represents the following ten 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 ASSOCIATION OF HAWAII

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

HAWAII ARCHITECTURAL GLASS AND METAL ASSOCIATION

We cannot recommend this bill at this time.

It is particularly not the substance of the bill however, it is the subject matter. The system continues to exist over the last few years despite the fact that there was a great deal of discussion about the details of this but nothing has materially changed.

We also dispute the general purpose findings of the bill noting that the subcontractors disclosure requirement has “the unintended consequence of increasing the number and complexity of construction protestS”. We do not think the facts bear this out. As a matter of fact, the number of protests has declined significantly, particularly frivolous protests which this bill aims to attack.

Further, we think it is particularly important to note that although the bill references the fact that the subcontractor listing requirement has promoted protests, it is not the requirement itself that caused the problem but rather the application or practices in the construction industry that contribute to that. The Subcontractor Listing Clause is not your target.

Because we have not heard any “cry” to address this area or a particular “push” by generals or subs to explore this area further, we cannot support it and recommend that the bill not move forward.

Thank you.