

**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

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TESTIMONY  
OF  
SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE  
ON  
GOVERNMENT OPERATIONS  
MARCH 16, 2017, 2:50 PM

HOUSE BILL 573, HOUSE DRAFT 1  
RELATING TO PROCUREMENT  
PROCUREMENT; BID SHOPPING; BID PEDDLING

Chair Mercado Kim, Vice-Chair Ruderman, and members of the committee, thank you for the opportunity to submit testimony on House Bill 573, House Draft 1. The State Procurement Office (SPO) **opposes** this bill.

- A. Section 2. Page 2, Line 14 (b) states the bidder shall not list more than one subcontractor unless the subcontractor varies with alternates.

This is a duplicative statement and is already covered in the same section but earlier, where the statute states: "...it shall 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."

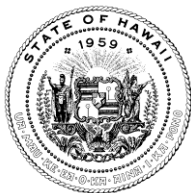
- B. Section 2. Page 4, Lines 19-22, and Page 5, Lines 1-20, and Page 6, Lines 1-9 states the reasons for substituting a subcontractor before and after award.

This process is already taking place after award but includes a very important aspect that has not been considered in this verbiage: it includes communications with the Government who has final approval rights. The government is acting as third party oversight to the decision-making process to ensure the request for substitution is for a valid reason. This Bill verbiage is essentially limiting the current authority of the government.

Allowing the prime contractor to make these changes after submitting their bid but before award, and without government approval, for the reasons listed, open a wide gap in which the prime contractor could bring the government a substitution every day until award. Notwithstanding the time burden this is placing on the procurement workforce, it is also removing the responsibility of the prime contractor to submit responsible and licensed subcontractors with its original bid and essentially moving this responsibility to the Procurement Officer.

Consider the reasons proposed: Inability to retain a license, bankruptcy, debarment etc. This would allow prime contractors to submit anyone on their proposal and not be concerned with who they choose in the first place.

Thank you.



DAVID Y. IGE  
GOVERNOR  
SHAN S. TSUTSUI  
LT. GOVERNOR

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OFFICE OF THE DIRECTOR  
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**PRESENTATION OF  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
REGULATED INDUSTRIES COMPLAINTS OFFICE**

**TO THE SENATE COMMITTEE  
ON  
GOVERNMENT OPERATIONS**

**TWENTY-NINTH STATE LEGISLATURE  
REGULAR SESSION, 2017**

**THURSDAY, MARCH 16, 2017  
2:50 P.M.**

**TESTIMONY ON HOUSE BILL NO. 573 H.D.1  
RELATING TO PROCUREMENT**

**TO THE HONORABLE DONNA MERCADO KIM, CHAIR,  
AND TO THE HONORABLE RUSSELL E. RUDERMAN, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:**

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 573 H.D.1, Relating to Procurement. My name is Daria Loy-Goto and I am the Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers comments on this bill.

House Bill No. 573 H.D.1 prohibits the substitution of a listed subcontractor in furtherance of bid shopping or bid peddling, but allows for the substitution of a listed subcontractor for the following reasons: (1) refusal of a listed subcontractor

to sign a contract; (2) bankruptcy or insolvency of a listed subcontractor; (3) inability of the listed subcontractor to perform the proposed contract; (4) inability of the listed subcontractor to retain necessary license, bonding, insurance, or other statutory requirements; (5) where a listed subcontractor is barred from participating in the project by court order or summary judgment, including debarment from a purchasing or enforcement agency; or (6) inability or refusal of the listed subcontractor to meet the contractual requirements or agreements of the bidder.

The bill also prohibits a bidder from listing more than one subcontractor for each scope of work specified, unless subcontractors vary with bid alternates.

RICO notes that this Committee heard the Senate companion measure, Senate Bill No. 1070, and passed out a Senate Draft 1 version that allows a bidder two hours after closing of the invitation for bids to clarify and correct subcontractor information and provides that construction bids shall be opened no sooner than two hours after the closing of the invitation for bids. The Senate Draft 1 version also removes the burden placed on prime contractors and substituted subcontractors to prove bid shopping or bid peddling did not occur and limits the reasons for a substitution of a subcontractor to the following situations: (1) refusal of a listed subcontractor to sign a contract with the prime contractor; (2) bankruptcy or insolvency of a listed subcontractor; or (3) inability of the listed subcontractor to perform the requirements of the proposed contract. The current Senate version, Senate Bill No. 1070 S.D.2, retains this Committee's Senate Draft 1 language.

Testimony on House Bill No. 573 H.D.1

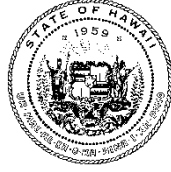
March 16, 2017

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House Bill No. 573 H.D.1 contradicts the Contractors License Board's ("Board") longstanding interpretation and policy that a person must be licensed as a contractor at the time of a bid submission and that the license must be current and appropriate for the type of work the contractor is to perform. While RICO is open to working with the Board and bill proponents, we do believe the bill allows unlicensed contractors to engage in licensed activity.

Thank you for the opportunity to testify on House Bill No. 573 H.D.1. I will be happy to answer any questions the Committee may have.

DAVID Y. IGE  
GOVERNOR



RODERICK K. BECKER  
Comptroller

AUDREY HIDANO  
Deputy Comptroller

**STATE OF HAWAII**  
**DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES**

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

TESTIMONY OF  
RODERICK K. BECKER, COMPTROLLER  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
TO THE  
SENATE COMMITTEE ON GOVERNMENT OPERATIONS  
ON  
THURSDAY, MARCH 16, 2017  
2:50 P.M.  
CONFERENCE ROOM 224

H.B. 573, H.D. 1

RELATING TO PROCUREMENT.

Chair Kim, Vice Chair Ruderman, and members of the Committee, thank you for the opportunity to submit testimony on H.B. 573, H.D. 1.

The Department of Accounting and General Services (DAGS) appreciates the intent of the bill, and recognizes the complicated issues related to the construction procurement process as it relates to subcontractor bids, and unintended consequences that result from subcontractor listings. DAGS supports the measure's proposed provision that would disallow subcontractors from recovering damages from the State for violations relating to subcontractor listings.

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

**PRESENTATION OF THE  
CONTRACTORS LICENSE BOARD**

TO THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS

TWENTY-NINTH LEGISLATURE  
Regular Session of 2017

Thursday, March 16, 2017  
2:50 p.m.

**TESTIMONY ON HOUSE BILL NO. 573, H.D. 1, RELATING TO PROCUREMENT.**

TO THE HONORABLE DONNA MERCADO KIM, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Peter H.M. Lee, Chairperson of the Contractors License Board (“Board”) Legislative Committee. Thank you for the opportunity to testify on House Bill No. 573, H.D. 1, which proposes to prohibit bid shopping and bid peddling for the competitive sealed bidding process.

This bill proposes to prohibit the prime contractor from substituting a listed subcontractor; and allows a prime contractor to substitute a listed subcontractor for various reasons (including but not limited to the inability of the listed subcontractor to perform the requirements of the proposed contract or the project).

The Board is concerned with the proposed language that allows a prime contractor to substitute a listed subcontractor due to the inability of the listed subcontractor to perform the requirements of the proposed contract or the project.

Allowing this substitution implies that a subcontractor without the appropriate license classification may bid on a construction project. This would conflict with Hawaii Revised Statutes (“HRS”) chapter 444, which prohibits unlicensed contracting, and the Board has consistently determined that a contractor who submits a bid is holding oneself out as being able to perform the work and acting as a contractor. Thus, at the

Testimony on House Bill No. 573, H.D. 1  
Thursday, March 16, 2017  
Page 2

time of bid, the entity must be licensed in the proper contractor classification(s) under HRS chapter 444.

This measure may have the unintended consequence of allowing unlicensed entities to bid as subcontractors and later, be substituted at the time of award with a licensed subcontractor. The Board opposes any such consequence as it is contrary to the current licensing law in HRS chapter 444.

Thank you for the opportunity to provide comments on House Bill No. 573,  
H.D. 1.





ELECTRICAL CONTRACTOR'S ASSOCIATION OF HAWAII

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March 15, 2017

To: Senate Committee on Government Operations  
Honorable Chairman Donna Mercado Kim & Vice Chairman Russell Ruderman

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

Subject: HB573, HD1 Relating to Procurement

Notice of Hearing

Date: Thursday, March 16, 2017  
Time: 2:50 PM  
Place: Conference Room 224  
State Capitol  
415 South Beretania Street

Dear Chairs Kim, Ruderman 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. While ECAH agrees to the intent and purpose of HB573, HD1 that prohibits bid shopping and bid peddling for the competitive sealed bid process, we oppose this bill as written due to the vagueness and ineffectiveness of its provisions.

In Section 2 (b) of the bill, it should be clarified that the use of a bid alternative should only be used if it's in the specifications of the procurement agency ensuring that each bidder bids on an even playing field. Secondly, in Section 2 (h) that prohibits bid shopping and bid peddling and allows the original listed subcontractor to recover damages from the bidder, it's highly unlikely that the subcontractor would file claims against the bidder when they depend on the bidder and other general contractors for future work once it is known that this subcontractor took this action. It would also be difficult to prove by a preponderance of evidence that bid shopping or bid peddling did not occur by the bidding contractor.

Further, the 6 reasons to substitute a subcontractor are problematic and would actually allow for bid shopping as a result of these reasons to substitute. Items 3, 4 and 6 should be eliminated. In item #3, if a listed subcontractor is unable to perform the requirements of the contract after submitting a bid, they could simply utilize item #1 which is refusing to sign the contract with the bidding contractor. For item #4, the listed subcontractor should not have submitted a bid without the proper license, bonding or insurance requirements as it would be considered unlicensed activity and the bidding contractor should

not have listed that subcontractor in the first place. Item #6, where the subcontractor is unable or refuses to meet the contractual requirements should not be a reason to substitute. This provision could allow the bidding contractor to impose additional and unrealistic terms and conditions beyond what is consistent with the terms and conditions at the time of the bid upon the subcontractor in order to disqualify them and replace them with another subcontractor of their choice.

This bill falls short in its attempt to prevent bid shopping and bid peddling and we ask that this committee refrain from making these changes to what is already working.

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

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# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 16, 2017

TO: HONORABLE DONNA MERCADO KIM, CHAIR, HONORABLE RUSSELL RUDERMAN, VICE CHAIR, COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **SUPPORT INTENT WITH SUGGESTIONS OF H.B. 573, HD1 RELATING TO PROCUREMENT.** Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Prohibits the bidder from listing more than one subcontractor for each scope of work identified, unless subcontractors vary with bid alternates. (HB573 HD1)

HEARING

DATE: March 16, 2017  
TIME: 2:50 p.m.  
PLACE: Capitol Room 224

Dear Chair Luke, Vice Chair Cullen and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

GCA **supports the intent** H.B. 573, HD1, Relating to Procurement, which defines bid-shopping and bid-peddling and prohibits such practice, while also allowing for the substitution of subcontractors for reasons connected to the subcontractor's ability to perform the work. Current law under HRS, Section 103D-302(b) requires the bidding contractor to list all subcontractors and joint contractors and their scope of work to be employed on public works projects unless the prime contractor has the required specialty license or will do the work themselves.

It is important to note that the HD1 version of this measure is modeled after Washington State's law which has been in place since 1993 with regard to subcontractor listing requirements and bid shopping/bid shopping prohibitions. However, the HD1 draft would differ from Washington's state's law because it excludes the first section of the Washington State law which would limit subcontractor listing to projects over \$1 million dollars, allow submission of the list one hour after the bid closes and also only requires three trades to be listed electrical, plumbing and heat, ventilation and air conditioning (HVAC). See Washington State Statute Revised Code of Washington 39.30.060 attached. GCA would request this Committee to consider the language of the entire Washington State Code to address the problems associated with the subcontractor listing provision. Upon speaking with our Washington State Counterpart in Seattle Washington they verified that the Code has continued to work for them in ways of reducing bid protests related to subcontractor listing.

Thank you for the opportunity to share our comments on this measure.

**RCW 39.30.060****Bids on public works—Identification, substitution of subcontractors.**

(1) Every invitation to bid on a prime contract that is expected to cost one million dollars or more for the construction, alteration, or repair of any public building or public work of the state or a state agency or municipality as defined under RCW 39.04.010 or an institution of higher education as defined under RCW 28B.10.016 shall require each prime contract bidder to submit as part of the bid, or within one hour after the published bid submittal time, the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract for performance of the work of: HVAC (heating, ventilation, and air conditioning); plumbing as described in chapter 18.106 RCW; and electrical as described in chapter 19.28 RCW, or to name itself for the work. The prime contract bidder shall not list more than one subcontractor for each category of work identified, unless subcontractors vary with bid alternates, in which case the prime contract bidder must indicate which subcontractor will be used for which alternate. Failure of the prime contract bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work or the naming of two or more subcontractors to perform the same work shall render the prime contract bidder's bid nonresponsive and, therefore, void.

(2) Substitution of a listed subcontractor in furtherance of bid shopping or bid peddling before or after the award of the prime contract is prohibited and the originally listed subcontractor is entitled to recover monetary damages from the prime contract bidder who executed a contract with the public entity and the substituted subcontractor but not from the public entity inviting the bid. It is the original subcontractor's burden to prove by a preponderance of the evidence that bid shopping or bid peddling occurred. Substitution of a listed subcontractor may be made by the prime contractor for the following reasons:

- (a) Refusal of the listed subcontractor to sign a contract with the prime contractor;
- (b) Bankruptcy or insolvency of the listed subcontractor;
- (c) Inability of the listed subcontractor to perform the requirements of the proposed contract or the project;
- (d) Inability of the listed subcontractor to obtain the necessary license, bonding, insurance, or other statutory requirements to perform the work detailed in the contract; or
- (e) The listed subcontractor is barred from participating in the project as a result of a court order or summary judgment.

(3) The requirement of this section to name the prime contract bidder's proposed HVAC, plumbing, and electrical subcontractors applies only to proposed HVAC, plumbing, and electrical subcontractors who will contract directly with the prime contract bidder submitting the bid to the public entity.

(4) This section does not apply to job order contract requests for proposals under \*RCW 39.10.130.

[ 2003 c 301 § 5; 2002 c 163 § 2; 1999 c 109 § 1; 1995 c 94 § 1; 1994 c 91 § 1; 1993 c 378 § 1.]

**NOTES:**

**\*Reviser's note:** RCW 39.10.130 was recodified as RCW 39.10.420 pursuant to 2007 c 494 § 511, effective July 1, 2007.

**Intent—2002 c 163:** "This act is intended to discourage bid shopping and bid peddling on Washington state public building and works projects." [ 2002 c 163 § 1.]

**Application—1994 c 91:** "This act applies prospectively only and not retroactively. It applies only to invitations to bid issued on or after June 9, 1994." [ 1994 c 91 § 2.]

**Application—1993 c 378:** "This act applies prospectively only and not retroactively. It applies only to invitations to bid issued on or after July 25, 1993." [ 1993 c 378 § 2.]



**March 16, 2017**

**TO:** Senate Committee on Government Operations

**FROM:** Blake Parsons, Executive Director

**SUBJECT:** Opposition to *H.B. 573, HD1 - Relating to Procurement*

Chair Kim and Members of the Committee:

My name is Blake Parsons. I am the Executive Director of the Sheet Metal Contractors Association (SMCA), a trade association that represents unionized sheet metal and air conditioning contractors in Hawaii.

**SMCA opposes H.B. 573, HD1.**

The bill creates logistical nightmares for State of Hawaii procurement offices by creating multiple new reasons for bid protests. This bill further complicates the procurement process and attempts to solve the bid protest issue that has been found to have little or no impact on State projects.

Most importantly, Page 5, Line 11-12 should be deleted ("*inability of the listed subcontractor to perform the requirements of the proposed contract or project*"), because the language is vague and up to wide interpretations. The word *inability* could be interpreted with a wide scope, therefore inciting bid protests, increasing costs and delaying projects.

If enacted, this bill would even further reduce the amount of subcontractors interested in bidding on State projects. This means less competition and higher costs to taxpayers.

Therefore, **we strongly oppose H.B. 573, HD1.**

Mahalo.

A handwritten signature in black ink, appearing to be "Blake Parsons", written over a horizontal line.

Blake Parsons  
Executive Director