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LATE

Testimony to the Senate Committee on Government Operations
Thursday, March 16, 2017
2:50 pm
Conference Room 224

RE: H.B. 573 HD1 – Relating to Procurement

Chair Kim, Vice-Chair Ruderman, and members of the committee:

My name is Gladys Quinto Marrone, CEO 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.

BIA-Hawaii is in support of H.B. 573 HD1, which would prohibit bid-shopping and bid-peddling in the competitive sealed bidding process. As a matter of fairness in the bidding process, we are in support of legislation that prevents bid-shopping and bid-peddling.

Thank you for the opportunity to share our views on this matter.

LATE



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GREGG S. SERIKAKU
EXECUTIVE DIRECTOR

Via Email

March 15, 2017

Senator Donna Mercado Kim, Chair
Senator Russel E. Ruderman, Vice-Chair
Senate Committee on Government Operations
The Twenty-Ninth Legislature, Regular Session of 2017

Chair Kim, Vice Chair Ruderman, and Members of the Committee:

SUBJECT: HB573 HD1 Relating to Procurement

My name is Gregg Serikaku. I am the Executive Director of the Plumbing and Mechanical Contractors Association of Hawaii.

The Association for which I speak is **opposed** to HB573 HD1.

This bill would prohibit bid shopping or bid peddling and also implements various reasons a listed subcontractor may be substituted.

While we appreciate the intent of this bill to allow subcontractors to recover damages for bid shopping by a prime bidder, we believe there is no legally verifiable method for either party to substantiate that the practice of bid shopping had occurred. In fact, this provision may ultimately result in frivolous accusations, distrust amongst contractors, and significant procurement delays. We also believe this change will degrade the integrity of the procurement process and ultimately increase bid challenges.

Further, the proposed reasons to substitute a listed subcontractor are too vague and should be clarified. Generally, we believe that the proposed substitutions should only be considered for situations that occur after bid closing and should not be allowed for reasons that were existing on the bid due date. This is needed to prevent an unscrupulous bidder from knowingly listing subcontractors who are non-compliant on the bid due date just so that the bidder can have a reason to shop the prices of other subcontractors.

Proposed items (1), (3) and (6), are especially ominous in that it creates situations where the bidder may intentionally include contractual terms that are impossible for the subcontractor to accept or may add scope requirements that the listed subcontractors are unable to perform, as a way for the bidder to substitute another subcontractor after shopping the bids.

In summary, we feel the language of this bill is too vague and creates significant potential for bid shopping by unscrupulous bidders.

We therefore respectfully urge the committee to hold this bill.

Respectfully yours,

A handwritten signature in black ink that reads "Gregg S. Serikaku". The signature is written in a cursive, flowing style.

Gregg S. Serikaku
Executive Director



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LATE

**TESTIMONY OF HAWAII LECET
CLYDE T. HAYASHI – DIRECTOR**

SENATE COMMITTEE ON GOVERNMENT OPERATIONS
Senator Donna Mercado Kim, Chair
Senator Russell E. Ruderman, Vice Chair

NOTICE OF HEARING

DATE: Thursday, March 16, 2017
TIME: 2:50 P.M.
PLACE: Conference Room 224

TESTIMONY ON HOUSE BILL NO. 573 HD1, RELATING TO PROCUREMENT.

ALOHA COMMITTEE CHAIR KIM, COMMITTEE VICE CHAIR RUDERMAN, AND
COMMITTEE MEMBERS ON GOVERNMENT OPERATIONS:

My name is Clyde T. Hayashi, and I am the Director of Hawaii LECET. Hawaii LECET is a labor-management partnership between the Hawaii Laborers Union, Local 368, and its unionized contractors.

Mahalo for the opportunity to testify in **SUPPORT of House Bill No. 573 HD1 with a friendly amendment.** This bill proposes to prohibit bid shopping and bid peddling for the competitive sealed bidding process. It also prohibits the bidder from listing more than one subcontractor for each scope of work identified, unless subcontractors vary with bid alternates; and allows a bidder to substitute a subcontractor under certain conditions.

From the time a subcontractor provides a price to a bidder to the day the subcontractor's work begins, it can range from a few months to several years. During that time, an originally listed subcontractor may need to be substituted. Hawaii LECET believes this measure will provide purchasing agencies narrow flexibility under six specific conditions to allow a bidder to substitute an originally listed subcontractor with another subcontractor.

We would like to recommend additional language that there will be no increases to the contract price should an originally listed subcontractor is substituted.

For this reason, we **support House Bill No. 573 HD1 with a friendly amendment** and look forward to its passage from this committee.

LATE

HEARING BEFORE THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS

House Bill 573, HD1
Relating To Procurement

Chair Kim 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 573, which seeks to statutorily prohibit bid shopping by creating a legal cause of action for an aggrieved subcontractor.

State law requiring the listing of subcontractors in public projects is the primary protection for subcontractors from predatory bid shopping or bid peddling practices. While we agree with the findings of fact section of this bill denouncing the practice of bid shopping and/or bid peddling, we note that currently the law is working well and that no changes are necessary.

Moreover, though it purports to aid subcontractors, this bill does not actually provide timely or effective protection for the subcontractor. The current law provides effective preventive protection to the subcontractor - no action is necessary to protect itself. By contrast, this bill requires the subcontractor to sue the general contractor and/or the substitute subcontractor to make itself whole. No subcontractor wants to incur the time and costs of litigation given an uncertain outcome and the enmity that litigation will surely create between the subcontractor and the general contractor. Because of these problems, a subcontractor is highly unlikely to ever avail itself of this illusory form of protection.

For all of these reasons, we respectfully ask that you defer this measure indefinitely. Thank you again for this opportunity to share our opposition to this measure.