

STAND. COM. REP. NO.

1092

Honolulu, Hawaii

MAR 24 2017

RE: H.B. No. 573  
H.D. 1  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Twenty-Ninth State Legislature  
Regular Session of 2017  
State of Hawaii

Sir:

Your Committee on Government Operations, to which was referred H.B. No. 573, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Prohibit bid shopping and bid peddling in the competitive sealed bidding process; and
- (2) Prohibit a bidder from listing more than one subcontractor for each scope of work identified unless subcontractors vary with bid alternates.

Your Committee received testimony in support of this measure from the Department of Accounting and General Services, General Contractors Association of Hawaii, Hawaii Laborers-Employers Cooperation and Education Trust, and Building Industry Association of Hawaii. Your Committee received testimony in opposition to this measure from the State Procurement Office; Contractors License Board; Electrical Contractor's Association of Hawai'i; Sheet Metal Contractors Association; Plumbing and Mechanical Contractors Association of Hawaii; 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. Your Committee received comments on this measure from the Department of Commerce and Consumer Affairs Regulated Industries Complaints Office.

Your Committee finds that efforts should be made to deter the possibility of bid shopping and bid peddling in the competitive sealed bidding process, and permitting injured subcontractor-plaintiffs to recover monetary damages from bidders and substituted subcontractors would discourage this unscrupulous practice and protects State interests.

Your Committee notes that the companion to this measure, S.B. No. 1070, S.D. 2 (Regular Session of 2017), which was previously passed by the Senate, is a substantially similar measure that prohibits bid shopping and bid peddling, and provides bidders of public works construction projects with two hours after the closing of a bid to clarify and correct minor technical issues with subcontractor listings. Your Committee finds that the competitive sealed bidding process can be improved by providing additional time for bidders to clarify and correct subcontractor information, which may minimize bid challenges, costs, and delays of public works projects while maintaining the integrity of the bid process.

Your Committee concludes that the language of S.B. No. 1070, S.D. 2, is preferable because it allows extra time for bidders to correct minor subcontractor information in an effort to reduce unnecessary delays in public works projects, removes the burden on bidders and substituted contractors to prove bid shopping or bid peddling did not occur, and limits the reasons that a substitution of a listed subcontractor may be allowed.

As such, your Committee has amended this measure by:

- (1) Deleting its contents and inserting the contents of S.B. No. 1070, S.D. 2, a substantially similar measure, which:
  - (A) Allows bidders two hours after bid closing to clarify and correct certain information regarding subcontractors;



- (B) Provides that bids for construction shall be opened no sooner than two hours after bid closing;
  - (C) Prohibits bid shopping and bid peddling in the competitive sealed bidding process; and
  - (D) Affords a legal means of redress to subcontractors affected by bid shopping and bid peddling practices in public works;
- (2) Clarifying that the substitution of an originally licensed subcontractor who has a valid and appropriate contractor's license from the time of bid through the time of award may be made for specified reasons;
  - (3) Clarifying that substitution of a listed subcontractor is allowed when the originally listed subcontractor is unable to perform in a manner consistent with the terms and written understandings of the parties;
  - (4) Inserting an effective date of July 1, 2055, to encourage further discussion; and
  - (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Government Operations that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 573, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 573, H.D. 1, S.D. 1, and be referred to your Committees on Judiciary and Labor and Ways and Means.

Respectfully submitted on  
behalf of the members of the  
Committee on Government  
Operations,




DONNA MERCADO KIM, Chair



The Senate  
 Twenty-Ninth Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Government Operations**  
**GVO**

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 573 HD1	GVO, JDL/WAM	3/16/17		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310	<input type="checkbox"/> Recommit 2313	
Members	Aye	Aye (WR)	Nay	Excused
KIM, Donna Mercado (C)	X			
RUDERMAN, Russell E. (VC)	X			
GALUTERIA, Brickwood				X
RHOADS, Karl	X			
TOKUDA, Jill N.				X
<b>TOTAL</b>	3	0	0	2
Recommendation:				
<input checked="" type="checkbox"/> Adopted		<input type="checkbox"/> Not Adopted		
Chair's or Designee's Signature:				
				
<b>Distribution:</b>				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

\*Only one measure per Record of Votes