

JOSH GREEN, M.D.  
GOVERNOR



KEITH A. REGAN  
COMPTROLLER  
MEOH-LENG SILLIMAN  
DEPUTY COMPTROLLER

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

TUESDAY, MARCH 14, 2023, 3:00 PM  
CONFERENCE ROOM 225 & VIDEO CONFERENCE

H.B. 542, H.D. 2

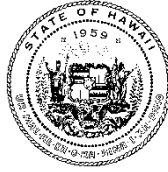
RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Gabbard, and Members of the Committee, thank you for the opportunity to submit testimony **opposing** House Bill (H.B.) 542 H.D. 2, which would allow a 24-hour period after the bid submission deadline to provide additional time for the correction of immaterial and technical information contained in subcontractor listings. It also requires that construction bids be publicly opened no sooner than twenty-four hours after the deadline for the submission of the bid.

The department opposes this bill because it is unnecessary as the correction of these errors are already addressed in statute and rules. Additionally, the proposed changes have the following unintended negative consequences:

- This proposal increases the complexity of the procurement process for construction.
- It increases the administrative burden on procurement agencies at a time when the agencies are experiencing staffing shortages.
- This legislation is contrary to the legislative goal of improving the quality of contractors on its construction projects because it assumes bidders are unable to do the problem solving necessary to submit timely, complete, and accurate bids and enables such bidders to bid on State projects.
- The proposed measures are unfair to bidders who submit accurate, timely responses.

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



**STATE OF HAWAI'I | KA MOKU'ĀINA O HAWAI'I**  
**STATE PROCUREMENT OFFICE**

P.O. Box 119  
Honolulu, Hawaii 96810-0119  
Tel: (808) 586-0554  
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<http://spo.hawaii.gov>

TESTIMONY  
OF  
BONNIE KAHAKUI, ACTING ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE  
ON  
GOVERNMENT OPERATIONS  
MARCH 14, 2023, 3:00 PM

HOUSE BILL 542, HD2  
RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Gabbard, and members of the committee, thank you for the opportunity to submit testimony on House Bill 542, HD2. The State Procurement Office (SPO) opposes the bill and provides comments.

HB 542, HD2, amends Section 103D-302 Competitive sealed bidding 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. 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." "Immaterial or technical information" does not include the identity of a subcontractor; however, it does include that a listed subcontractor whose license at bid time had been suspended or forfeited due solely to a ministerial act, pursuant to chapter 444; provided that by the time of the award, the subcontractor's license has been reinstated.

**Comments:** Mistakes in bids are already addressed in statute and rules. Section 103D-302(g), Hawaii Revised Statutes, states that 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 policy board. Section 3-122-31(c), Hawaii Administrative Rules, addresses mistakes in bids, such as missing signatures or typographical errors, that are discovered after the deadline for receipt of bids but prior to award. The procurement officer may correct or waive obvious mistakes that if allowed to be corrected or waived is in the best interest of the purchasing agency and is fair to other bidders, without a specific time limit.

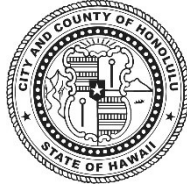
HB 542, HD2, is allowing only bidders of construction projects to correct information on their bids up to twenty-four hours after the bid submission deadline and such corrections include missing signatures, typographical errors, inaccuracy or omission errors, and listing a subcontractor whose license has been suspended or forfeited at the time of bid.

The SPO echoes the Contractors License Board's concerns that this bill conflicts with the requirements of Hawaii Revised Statutes (HRS) chapter 444 and the Board's longstanding interpretation that a person must be licensed as a contractor both at the time of submitting a proposal or bid, and at the time of award on a construction project.

The bill's preamble identifies technical mistakes include instances where a bidder failed to list a required subcontractor. The language of this bill would prohibit any additions or substitutions to the list of subcontractors and therefore not provide this relief for the general contractor.

It is not necessary to allow a bidder of a construction project to clarify and correct information up to twenty-four hours after bid submission deadline and mandate a twenty-four-hour waiting period after bid submission deadline before construction bids can be opened. It is the contractors' and subcontractors' responsibility, as well as all bidders' responsibility, to ensure their bid responses are accurate and conforms to the requirements of the solicitation by the bid submission deadline. This added language adds complexity and delays to the procurement process.

Thank you.



RICK BLANGIARDI  
MAYOR

ANDREW T. KAWANO  
DIRECTOR

CARRIE CASTLE  
DEPUTY DIRECTOR

TESTIMONY OF ANDREW T. KAWANO  
DIRECTOR OF BUDGET AND FISCAL SERVICES  
CITY AND COUNTY OF HONOLULU  
BEFORE THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS  
**March 14, 2023, 3:00 PM, Conference Room 225 and Videoconference**

TO: The Honorable Senator Angus L.K. McKelvey, Chair  
The Honorable Senator Mike Gabbard, Vice Chair  
and Members of the Senate Committee on Government Operations

RE: OPPOSITION OF HOUSE BILL 542, HD2, RELATING TO PROCUREMENT

The Department of Budget and Fiscal Services, City and County of Honolulu (City), **strongly opposes** House Bill (HB) 542, HD2, Relating to Procurement.

A bidder is responsible for submitting an accurate bid by the date, time, and location specified in the solicitation. In the event a bid contains incorrect "immaterial or technical information," the Hawaii Revised Statutes (HRS) 103D-302(g) and the Hawaii Administrative Rules (HAR) §3-122-31 already allow for an obvious mistake in a bid to be corrected, withdrawn or waived to the extent it is not contrary to the best interest of the purchasing agency or to the fair treatment of other bidders.

The City is not aware of any recent situation where a bidder was rejected only due to an immaterial error. The proposed changes will lead to additional complexity, more protests and additional time and costs to the City.

Furthermore, the proposed language in Section 2, HRS 103D-302(j), lines 15 through 19, should be removed, as it appears to violate HRS Chapter 444 and contradict DCCA Office of Administrative Hearings case PCX-2011-005 *Sumitomo Corporation of America vs. Director, Department of Budget and Fiscal Services, City and County of Honolulu and Ansaldo Honolulu JV*, that a bidder (and/or its subcontractors) must be properly licensed at the time of bid submission.

For the reasons stated above, the City respectfully opposes House Bill 542, HD2.

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](mailto:bfspurchasing@honolulu.gov).

**Testimony of the Contractors License Board**

**Before the  
Senate Committee on Government Operations  
Tuesday, March 14, 2023  
3:00 p.m.  
Conference Room 225 and Videoconference**

**On the following measure:  
H.B. 542, H.D. 2, RELATING TO PROCUREMENT**

Chair McKelvey and Members of the Committee:

My name is Neal Arita, and I am the Chairperson and Legislative Liaison for the Contractors License Board (Board). The Board opposes this bill.

The purposes of this bill are to: (1) 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; (2) require that bids for construction be opened no sooner than twenty-four hours after the deadline for the submission of bids; and (3) define "immaterial or technical information."

The Board has serious concerns that this measure will allow a contractor with a suspended or forfeited license to perform work as long as the contractor was properly licensed at the time of award. The Board believes that this allowance conflicts with the requirements of Hawaii Revised Statutes (HRS) chapter 444 and the Board's longstanding interpretation that a person must be licensed as a contractor both at the time of submitting a proposal or bid, and at the time of award on a construction project. The Board has consistently taken the position that a contractor's license is required when a person submits a bid on a construction project to another person, entity, or government agency, as the person who is submitting the bid is acting, advertising, or holding the person's self out as a contractor and must therefore be licensed at that time.

This bill appears to condone or authorize unlicensed activity from the time of bid submittal to and through the time the contract is awarded. An unlicensed contractor is subject to disciplinary action, including a fine. Additionally, the prime, general, or other

specialty contractor that uses that unlicensed person's bid may also be subject to disciplinary action.

Thank you for the opportunity to testify in opposition on this bill.



March 13, 2023

TO: HONORABLE ANGUS L.K. MCKELVEY, CHAIR, HONORABLE MIKE GABBARD, VICE CHAIR, COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **SUPPORT OF H.B. 542 HD2, 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, 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. 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 6/30/2026. Effective 6/30/3000.

HEARING

DATE: Tuesday, March 13, 2023  
TIME: 3:00 p.m.  
PLACE: Capitol Room 225

Dear Chair McKelvey, Vice Chair Gabbard 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 **supports** H.B. 542 HD2, 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, 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. 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 6/30/2026.

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





GENERAL  
CONTRACTORS  
ASSOCIATION  
OF HAWAII

QUALITY PEOPLE. QUALITY PROJECTS

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](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.

For these reasons we ask that the Committee pass this measure.

Thank you for the opportunity to testify in support of this measure.

# ***SAH - Subcontractors Association of Hawaii***

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

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

March 14, 2023

Testimony To: Senate Committee on Government Operations  
Senator Angus L.K. McKelvey, Chair

Presented By: Tim Lyons, President

Subject: H.B. 542, H.D. 2 – RELATING TO PROCUREMENT

Chair McKelvey 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 are in very reluctant, hesitant and cautious about this bill.

This Committee may be aware that the subject of subcontractor listing has been one that has been around for several years and both sides are fairly set in their positions. The language in this bill tends to work towards a solution of what general contractors say is insufficient time as they put their bids together in order to check over the information and be sure they have not made an error. We are not sure that we would subscribe to that theory because we think that anytime a company is submitting a bid, it needs to be sure of the accuracy contained in it including the listing of subcontractors. However, with the parameters that are specified in this bill and in the "spirit of cooperation", we had supported the intent of this bill. Recently, however, attempts by the other party to alter the bill have made us wary of their intentions and true motives. So, we no longer support this bill.

We are most appreciative of the House reducing the sunset clause to 2026. This is an extremely important area to the financial health of subcontractors and while we doubt it satisfies the generals, we respectfully request a trial run and to that extent, please leave the sunset clause in tact, if you pass it at all! If this turns out to be a mistake we would hope it is short-lived.

Thank you.

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

March 13, 2023

Senator Angus McKelvey, Chair  
Senate Committee on Government Operations  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: House Bill 542, HD2 (Relating To Procurement)  
Hearing date: March 14, 2023  
Time: 3:00 p.m.

Dear Chair McKelvey 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 542, HD2. 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.

1. Section 1 of the Measure Should Be Deleted

As an initial matter, we strongly disagree with statements in Section 1 of the Bill finding that the subcontractor listing requirement of the procurement laws, "has the unintended consequence of increasing the number and complexity of construction protests." The foregoing language implies that the subcontractor listing requirement is a significant problem causing delays and increased cost for public construction projects. This could not be further from the truth. A task force convened pursuant to Senate Concurrent Resolution 92, S.D.2 (2013) to study the issue of bid protests related to subcontractor listing, among other things. This Task Force included participation by all relevant stakeholders, including the General Contractors of Hawaii, the Subcontractors Association of Hawaii, the Office of the Comptroller, the Department of Accounting and General Services, Department of Education, Department of Transportation, City and County of Honolulu and all relevant procurement offices. The resulting 16 page report and 91 pages of attachments which contain supporting documentation produced by the Task Force can be found online at the Department of Accounting and General Services' website at:

<https://ags.hawaii.gov/wp-content/uploads/2012/09/ProcurementTaskForceReportLS2013.pdf>

In the report, the Task Force found that, in general, bid protests did **not** result in any significant delays or increased costs. See Task Force Report at 8-9. The work of the Task Force revealed that protests related to the subcontractor listing requirement increased costs to the State by 0.06% in FY2013 and 0.34% in FY2014. See id. at 13. The Task Force, which included the Comptroller, the Department of Accounting and General Services, the State Procurement Office and other procurement agencies as participants, recommended **no changes be made to Chapter 103D with respect to the subcontractor listing requirement.** See id. at 10-11. We strongly suggest that this Committee take the time to read the report, especially the section on subcontractor listing.

We are aware of a report submitted by the State Procurement Office to the Legislature in 2020 (hereinafter the "IKASO Report") that was based on an investigation by a third-party mainland procurement administrator specializing in federal procurement. That report, which was tasked with identifying differences in state and federal procurement law in general, and not necessarily with deficiencies in state procurement law can be found on the SPO's website at:

[https://spo.hawaii.gov/wp-content/uploads/2020/01/CPFR-Report\\_HR142-SLHL-2016-FINAL\\_01-13-20.pdf](https://spo.hawaii.gov/wp-content/uploads/2020/01/CPFR-Report_HR142-SLHL-2016-FINAL_01-13-20.pdf)

In that report, IKASO makes an analysis of subcontractor listing protests in the year 2018. There is no indication that IKASO studied any other years. Thus, the IKASO report appears to be based on a very narrow time frame which may or may not be indicative of the existence of a problem over time. Moreover, the IKASO report only appeared to focus on the overall numbers of protests in that year - there is no indication that IKASO considered how many of the protests made that year were valid protests (for example where a bidder listed a debarred contractor). Finally, and most importantly, IKASO does not dispute the findings and conclusions of the State Procurement Task Force that bid protests related to subcontractor listing were not a statistically significant factor in increasing project costs or in increasing delays.

Because Section 1 of this Bill is deceptive and in some cases contrary to documented findings by a comprehensive study conducted by the procurement agencies and the affected stakeholders themselves, and at the very least is in dispute, this section should not be included in this measure.

## 2. The Bill Will Actually Allow Bid Shopping

**The key problem with this measure is that, despite what it says, it will allow bid shopping to occur.** Under this bill, the bidder will be allowed to correct its bid as a matter of law, but the procurement officer will not be able to open any of the bids until 24 hours after the deadline for submitting bids. Because the procurement officer is prevented by this bill from knowing what subcontractors are listed in previously submitted bids that are corrected within the 24 hour window in question, there is no way for them or anyone else to detect or prevent bid shopping. As an example, the bidder may drop off its bid at the deadline with subcontractor "A" listed. The bidder could then bid shop Subcontractor "A" in the 24 hour window, retract its bid and then submit a new bid with Subcontractor "B" instead. Because the procurement officer is prevented from seeing the subcontractors listed in the initial (now withdrawn bid), there is no way she can tell that bid shopping occurred. This is precisely the sort of conduct that the current law prevents by having a hard deadline and discouraging changes subsequent to that deadline.

Although it might be possible for the procurement agency to require that all submitted bids may not be retracted, something which is not explicitly required by this measure, the procurement officer would still have to go through each bid and any subsequent corrected bids to compare them in order to identify any changes. Any inadvertent error by the procurement officer at any step in this process would likely subject the award to a bid protest. Thus, the only way to provide a "check" against bid shopping would only create more work for the procurement agency and actually increase the chances of a protest.

While the GCA has argued that this bill would simply follow existing California law, this bill is actually significantly different from California law. The pertinent California Contract Code provides in pertinent part:

An inadvertent error in listing the California contractor license number or public works contractor registration number provided pursuant to paragraph (1) shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive if the corrected contractor's license number is submitted to the public entity by the prime contractor **within 24 hours after the bid opening** and provided the corrected contractor's license number corresponds to the submitted name and location for that subcontractor.

Cal. Public Contract Code §4104(a)(1). [Emphasis added]. Because California allows corrections **only after the opening of bids**, the threat of bid shopping to subcontractors is minimal. Unlike California, however, this measure will allow changes in the 24 hour period **before the opening of bids**, which is when bid shopping will occur. Again, because the bids may not be seen by the procurement officer, there is no way for anyone to

determine that bid shopping has occurred.

3. The Bill Is Unnecessary Because Existing Law Expressly Permits Corrections

Finally, amending the Procurement Code to allow clarification or correction of non-material or technical information contained in or information omitted from a bid is entirely unnecessary, because such corrections are **already expressly allowed under Hawaii Revised Statutes** ("HRS") §103D-302(g). That section provides in pertinent part:

Correction or withdrawal of inadvertently erroneous bids before or after the 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 policy board.

Id. [Emphasis added]. Because the Procurement Code already expressly permits bid corrections, there is absolutely no need for this Bill.

To the extent that general contractors desire specific language indicating the exact circumstances under which a bid correction must be allowed (see p. 9 at lines 13-19 of the Bill), they should pursue such change by seeking the amendment of the Hawaii Administrative Regulations interpreting HRS §103D-302, not by changing the Hawaii Revised Statutes. It is well recognized that as the executive departments implementing the Hawaii Revised Statutes generally have a better understanding of and expertise with such nuances, they and not the Legislature should be the ones to adopt such language.

It is also worth noting here that the IKASO Report so frequently touted by the General Contractors Association studied the topic of modifications and corrections to submitted bids. See IKASCO Report at 74-77. IKASO reported its findings that, "[i]nterviewees did not express any issues with the State's bid modification and withdrawal policy." See IKASCO Report at 76. IKASCO therefore concluded with respect to the issue of the correction of bids as follows:

In general, the procedures for handling modifications, withdrawals, and correcting of mistakes at the State and Federal levels are very similar. Both entities share the same intent to allow corrections to obvious mistakes to occur and have processes set up to correct these in a fair and transparent way. Both entities do not want to punish bidders for mistakes, but want to encourage bids that are in the best interest of the government even if that means allowing a modification. Additionally, both entities require bidders to notify the office running the procurement of the modification or withdrawal, and that these can be accepted at any time before bid opening. Both entities also stress the importance of not being prejudicial to other bidders when correcting mistakes.

Accordingly, it is not clear that the present system can be more aligned to the Federal system in any meaningful way. **Therefore, no recommendation is made.**

See Id. at 77; 112-114. [Emphasis added]. Having studied the issue and finding no need to recommend change, the IKASCO Report supports the view that this measure is wholly unnecessary.

Based on all of the foregoing, there is no need for this bill. There is no credible, empirically based evidence that the proponents of this Bill can cite to showing the existence of any problems created by the subcontractor listing requirement. Even if a significant problem did exist, this measure does not do what it purports to do in allowing for small, insignificant corrections; it actually effectively removes the protections of HRS §103D-302(b) entirely. Again, this statute is the only source of protection that subcontractors have against bid shopping. Finally, the existing statute expressly allows for changes of the sort desired by the Bill's proponents; we should not be enacting duplicative and unnecessary legislation.

Adopting this measure will only serve to open the door to bid shopping, reward incompetence, punish diligent bidders and lower the standards of procurement for public construction projects in Hawaii.

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

Jeffrey S. Masatsugu



Hawaii Operating Engineers Industry  
Stabilization Fund PAC  
2181 Lauwiliwili Street  
Kapolei, HI 96707  
Phone: (808) 845-6221  
Website: [www.hoeisf.com](http://www.hoeisf.com)

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March 14, 2023

Senate Committee on Government Operations  
Senator Angus McKelvey, Chair  
Senator Mike Gabbard, Vice Chair

**TESTIMONY IN SUPPORT**  
HB542 HD2, Relating to Procurement

Aloha Chair McKelvey, Vice Chair Gabbard, and Members of the Committee:

Thank you for the opportunity to submit testimony on behalf of the Hawaii Operating Engineers Industry Stabilization Fund Political Action Committee (HOEISF PAC). The HOEISF PAC is a non-profit labor management organization whose core mission is to represent the interests of the Operating Engineers Local Union No. 3 and Hawaii's leading contractors and ensure that the industry is thriving and sustainable for the future.

We are writing in **support of HB542 HD2**, 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, 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. 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 goal of this legislation is to reduce the risks of protests due to the subcontractor listing requirements of the Procurement Code. Unfortunately, the subcontractor listing requirement can be used by bidders to attack the responsiveness of a proposal, which can lead to contracts being awarded to non-low bidders and project delays. As a result, not only does the lowest bidder and their listed subcontractors get disqualified from the project, but the state (and taxpayer) ultimately could end up paying more for the project.

Thank you for the opportunity to provide our testimony in support of this measure.



# IRON WORKERS STABILIZATION FUND

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March 14, 2023  
3:00 pm

Senate Committee on Government Operations  
Conference Room 225 & Videoconference  
State Capitol  
415 South Beretania Street

## Re: HB542 HD2 – RELATING TO PROCUREMENT

Aloha Chair Angus L. K. McKelvey, Vice Chair Mike Gabbard, and Members of the Committee:


We **OPPOSE** HB542 HD2. The bill would 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. It would also require 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 bill would allow bid shopping and it is not necessary as mistakes may be corrected under current enacted statutes and rules.

The bill’s fundamental problem is that will allow unscrupulous practice of bid shopping, where a prime contractor of a low bid submitted by a subcontractor to pressure other subcontractors into submitting even lower bids. The prime contractor bidder would be allowed to correct its bid, while the procurement officer would not be able to view the bids until a full 24 hours after bid submission. In that 24-hour window, a prime contractor bidder could change the names of a listed subcontractor, and no one would know, not even the procurement officer.

Furthermore, the bill is not necessary as any mistakes may be addressed under current law. If there is a mistake in a bid, already states that 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 policy board (HRS 103D-302(g)). Also, addresses mistakes in bids, such as missing signatures or typographical errors, that are discovered after the deadline for receipt of bids but prior to award (HRS 3-122-31(c)). Finally, the agency procurement officer may correct or waive certain mistakes if in the best interest of the purchasing agency and is fair to other bidders.

This bill would further complicate the procurement process and allow for more areas where administrative mistakes may occur which could result in additional bid protests. It is ultimately the responsibility of the prime contractor bidder to ensure that their chosen subcontractor partners on the bid are following all the necessary bid requirements. We urge the committee to **HOLD** this bill. Mahalo for the opportunity to testify.

Sincerely,



T. George Paris  
Managing Director



March 13, 2023

Senate Committee on Government Affairs  
State Capitol, Room 225  
415 South Beretania Street  
Honolulu, HI 96813

**LATE**

**RE: HB 542, HD2 Relating to Procurement**

Aloha Chair McKelvey, Vice Chair Gabbard, and Members of the Committee:

My name is Gino Soquena, Executive Director of the Hawaii Building & Construction Trades Council (HBCTC) which is comprised of 18 construction trade unions here in the State of Hawaii. Thank you for the opportunity to offer written testimony in **STONG OPPOSITION** to HB 542, HD2 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.

While we can appreciate the intent of this bill to deal with minor technical or immaterial changes to bids to prevent frivolous protests, we must **STONGLY OPPOSE** this bill. First, this bill is completely unnecessary as Hawaii Revised Statutes Section 103D-302(g) and Hawaii Administrative Rules Section 3-122-31(c) already provide the flexibility to make these immaterial and technical changes to the bid. Agencies have already testified that they have utilized these statutes and rules for exactly that purpose.

Second, this bill will only serve to open the door for precisely 24 hours to the unethical practice of bid shopping. All bid shopping does is allow the prime bidder, or general contractor, to increase profits by attempting to solicit lower prices from the subcontractors. This practice does not save the State any money, it only serves to increase profits for the bidder. The bill may state that the only changes that can be made are immaterial and technical, but there are no safeguards, rules, procedures, or anything in place to prevent other material and substantial changes made to the bid.

The Hawaii State Legislature has found that this practice is so unwanted that the Procurement Code was enacted to very specifically address this problem by requiring the subcontractors be listed, along with the scope and nature of their work, at the time bid.

We respectfully ask this committee to **INDEFINITELY DEFER** this bill and allow the existing laws and rules to address the concerns of immaterial and technical issues on bids.

Mahalo,

A handwritten signature in black ink, appearing to read 'Gino Soquena', written over a faint blue watermark of the Hawaiian state seal.

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