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LATE**Testimony to the Senate Committee on Government Operations****March 16, 2017****2:50 p.m.****Conference Room 224****RE: HB 1229 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 supports the passage of H.B. 1229 HD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by limiting which projects the subcontractor listing requirement applies to based on a dollar threshold. Under this proposed change, the subcontractor list would still be required but only on projects either over or under a certain dollar threshold.

Under current law HRS, Section 103D-302(b) requires the bidding contractor to list subcontractors and joint contractors and their scope of work to be employed on all public works projects unless the prime contractor has the required specialty license or will do the work themselves. The listing of subcontractors has become a way in which bidders attack the responsiveness of a proposal, resulting in awards to non-low bidders, increased cost to the state and delay of 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 performing, but the state could end up paying millions of dollars more for the project. This bill proposes to limit which projects the subcontractor listing applies to based on the cost of the project, which will in turn limit these types of challenges.

Given the large number of "C" (currently over 100 issued and growing), it becomes increasingly difficult for the general contractor to ensure that their submitted listing includes all necessary information. This will not change the law that requires that all contractors on the project must be properly licensed, nor would it change the responsibility of the general contractor to ensure the project is completed.

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



SHARING YOUR VISION. BUILDING SUCCESS.

LATE

Via E-mail: GVOTestimony@capitol.hawaii.gov
Facsimile: 1-808-587-7205

March 16, 2017

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

SUBJECT: **SUPPORT OF H.B. 1229, HD1 RELATING TO PROCUREMENT.** Requires public procurement construction bids to list subcontractors and joint contractors only for contracts with an unspecified total value; provided that bids lacking this list may be accepted if in the State's best interest. (HB1229 HD1)

HEARING

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

Dear Chair Mercado Kim, Vice Chair Ruderman and Members of the Committee,

Nordic PCL Construction, Inc. **supports** the passage of H.B. 1229, HD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by limiting which projects the subcontractor listing requirement applies to depending on a dollar threshold. Under this proposed change, the subcontractor list would still be required but only on projects either over or under a certain dollar threshold.

Under current law HRS, Section 103D-302(b) requires the bidding contractor to list subcontractors and joint contractors and their scope of work to be employed on all public works projects unless the prime contractor has the required specialty license or will do the work themselves. The listing of subcontractors has become a way in which bidders attack the responsiveness of a proposal, resulting in awards to non-low bidders, increased cost to the state and delay of 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 performing, but the state could end up paying millions of dollars more for the project. Therefore the lowest bidder and all of its listed subcontractors lose out on the opportunity to do work for the state or county. This bill proposes to limit which projects the subcontractor listing applies to based on the cost of the project, which will in turn limit these types of challenges. This is not a new concept as the State of Washington only requires a subcontractor list to be submitted for projects over \$1 million but only requires 3 trades to be listed electrical, plumbing and Heating, Ventilation and AC subcontractors.

Given the large number of "C" licenses (currently over 100 issued and growing), it becomes increasingly difficult for the general contractor to ensure that their submitted listing includes all necessary information. This will not change the law that requires that all contractors on the project must be properly licensed, nor would it change the responsibility of the general contractor to ensure the project is completed.

Nordic PCL Construction, Inc. **supports** H.B. 1229, HD1 and recommends its passage.

Yours truly,

NORDIC PCL CONSTRUCTION, INC.



Glen Kaneshige, President

NORDIC PCL CONSTRUCTION, INC.

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LATE

Testimony by:
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IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 16, 2017
2:50 p.m
State Capitol, Room 224

**H.B. 1229, H.D. 1
RELATING TO PROCUREMENT**

Senate Committee on Government Operations

The Department of Transportation (DOT) provides the following **comments** to the proposed bill which proposes a revision to the subcontractor listing by including a total value threshold for the requirement to list a subcontractor. The original bill listed the threshold at \$5 million.

The stated purpose of the proposed revision is to “reduce the number of subcontractors that must be listed in the bid proposal, thereby reducing the number of opportunities to challenge bids on the basis of subcontractor listing errors.”

Instead of applying equally across the board for all projects, the subcontractor listing requirement would only apply to larger projects. Larger projects generally have more specialty trade work and it corresponds that the general contractor would need to engage and list more subcontractors on these larger projects.

Smaller projects generally have less specialty trade work, and for these projects, the subcontractor listing would not apply if this law is passed, even though the general on smaller projects would have less subcontractors to engage, and list on these projects.

If applied, however, a general contractor bidding on a pavement improvements project under the value threshold would not have to list a pavement striping subcontractor, yet a general contractor that bids on a pavement improvements project that meets the value threshold would have to list the pavement striping subcontractor.

Thank you for the opportunity to provide testimony.



LATE

March 15, 2017

Sent Via E-mail to: GVOTestimony@capitol.hawaii.gov

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

SUBJECT: **SUPPORT OF H.B. 1229, HD1 RELATING TO PROCUREMENT.** Requires public procurement construction bids to list subcontractors and joint contractors only for contracts with an unspecified total value; provided that bids lacking this list may be accepted if in the State's best interest. (HB1229 HD1)

HEARING

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

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

Healy Tibbitts Builders, Inc. is a general contractor in the State of Hawaii and has been actively engaged in construction work in Hawaii since the early 1960's. In addition to being a general contractor, Healy Tibbitts also performs work as a subcontractor for foundation work.

Healy Tibbitts Builders, Inc. **supports** the passage of H.B. 1229, HD1, Relating to Procurement, which would amend the current procurement subcontractor listing requirement under Section 103D-302, HRS by limiting which projects the subcontractor listing requirement applies to depending on a dollar threshold. Under this proposed change, the subcontractor list would still be required but only on projects either over or under a certain dollar threshold.

Under current law HRS, Section 103D-302(b) requires the bidding contractor to list subcontractors and joint contractors and their scope of work to be employed on all public works projects unless the prime contractor has the required specialty license or will do the work themselves. The listing of subcontractors has become a way in which bidders attack the responsiveness of a proposal, resulting in awards to non-low bidders, increased cost to the state and delay of 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 performing, but the state could end up paying millions of dollars more for the project. Therefore, the lowest bidder and all of its listed subcontractors lose out on the opportunity to do work for the state or county. This bill proposes to limit which projects the subcontractor listing applies to based on the cost of the project, which will in turn limit these types of challenges. This is not a new concept as

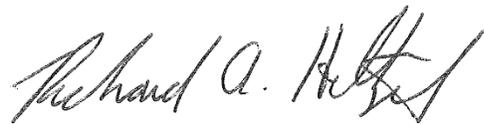
Healy Tibbitts Builders, Inc.

the State of Washington only requires a subcontractor list to be submitted for projects over \$1 million but only requires 3 trades to be listed electrical, plumbing and Heating, Ventilation and AC subcontractors.

Given the large number of "C" specialty licenses (currently over 100 issued and growing), it becomes increasingly difficult for the general contractor to ensure that their submitted listing includes all necessary information. This will not change the law that requires that all contractors on the project must be properly licensed, nor will it change the responsibility of the general contractor to ensure the project is completed.

Healy Tibbitts Builders, Inc. **supports** H.B. 1229, HD1 and recommends its passage.

Very truly yours,
Healy Tibbitts Builders, Inc.

A handwritten signature in black ink, appearing to read "Richard A. Heltzel". The signature is written in a cursive style with a large, stylized initial "R".

Richard A. Heltzel
President



1088 BISHOP STREET #408
HONOLULU, HI 96813
PH: (808) 597-1216

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: HB1229 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 **strongly opposed** to HB1229 HD1.

This bill would create an arbitrary and unnecessary dollar threshold for contracts requiring a subcontractor listing. While the threshold in this draft is of an unspecified amount, we believe the inclusion of a threshold would only serve to disadvantage those subcontractors whose value of work falls below the threshold by subjecting them to the unethical and predatory practice of bid shopping. We also believe this change will degrade the integrity of the procurement process and ultimately increase bid challenges.

While the proponents of this bill may try to mislead you into believing that there has been an excessive number of protests and costs related to the sublisting requirement and that a listing threshold is necessary to reduce these protest, we believe that the 2016 report from the Procurement Task Force clearly shows otherwise. In 2015 the procurement task force culminated 2 years of data gathering, meetings and discussion with stakeholders, with a report to the legislature that looked at the overall efficiency of procurement on government projects. The data from this report indicates that only a very small percentage of the total construction jobs procured by the reporting agencies were protested, and that the increase in the contract price of bids going to the non low bidder due to protests was less than 1%. These results clearly show that the number and costs of protests are minimal, and in most cases prime bidders were able to correctly follow the procurement rules and subcontractor listing requirements currently in place.

In summary, there is no substantiated need to dilute the sublisting requirement by implementing a listing threshold. Other dollar thresholds that have been proposed in the past represent sizable contracts for many contractors especially for the small and medium sized companies which form the backbone of the local construction industry, and these companies should not be discounted and exposed to bid shopping.

We therefore respectfully urge the committee to hold this bill.

Respectfully yours,

Gregg S. Serikaku
Executive Director

LATE

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



NELSON H. KOYANAGI, JR.
DIRECTOR

GARY T. KUOKAWA
DEPUTY DIRECTOR

TESTIMONY OF NELSON H. KOYANAGI, JR.
DIRECTOR OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
BEFORE THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS
March 16, 2017, 2:50 PM, Conference Room 224

HOUSE BILL 1229, H.D. 1, "RELATING TO PROCUREMENT"

Position: Support with Amendments

TO: The Honorable Chair Mercado Kim, Vice-Chair Ruderman and Members of the Committee on Government Operations

The Department of Budget and Fiscal Services, City and County of Honolulu (City), **supports** House Bill No. 1229, H.D. 1, Relating to Procurement.

Subcontractor listing requirements and licensing issues have caused protests and award delays. The listing of subcontractors has become a way in which bidders attack the responsiveness of an offer, resulting in awards to non-low bidders. This increases cost to the City and delays projects.

The City recommends removing the requirement altogether. Please see below for a recommendation for HB 1229, H.D. 1:

~~"(b) An invitation for bids shall be issued, and shall include a purchase description and all contractual terms and conditions applicable to the procurement. If the invitation for bids is for construction[,] with a total estimated contract value of more than \$ _____, 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. Construction bids that do not comply with this requirement may be accepted if acceptance is in the best interest of the State and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than one per cent of the total bid amount."~~

The City agrees with the following language on page 2, lines 17 to 21: "...the federal government does not require the listing of subcontractors on any bid proposal. Furthermore, the 2000 American Bar Association's Model Procurement Code, the model for Hawaii's Public Procurement Code, does not include such a subcontractor listing requirement." Accordingly, the City recommends removing the requirement to list joint contractors and subcontractors on construction contracts.

Senate Committee on Government Operations
March 16, 2017
Page 2

For the reasons stated above, the City respectfully requests that this bill be passed as amended herein.

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.

LATE

HEARING BEFORE THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS

House Bill 1229, 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 **strong opposition** to House Bill 1229, HD1 which seeks to limit State law requiring the listing of subcontractors in public construction projects to only projects of an unspecified (blank) total value.

State law requiring the listing of subcontractors is the primary protection for subcontractors from predatory bid shopping or bid peddling practices. These unethical practices inure to the benefit of the general contractor only, not to the landowner or procurement agency. Any weakening of the law no matter how small or great undermines public confidence in the procurement system and promotes substandard work and/or delays.

We also strongly disagree with the findings section of this Bill which implies that subcontractor listing is a significant problem causing delays and increased cost for public construction projects. The State Procurement Task Force convened pursuant to Senate Concurrent Resolution 92, S.D. 2 (2013) studied data relating to bid protests filed with respect to construction contracts over a multi-year period and concluded that bid protests related to subcontractor listing issues are simply not a statistically significant problem. The Task Force decided not to recommend any changes to the State's procurement law with respect to subcontractor listing.

Finally, any suggestion that subcontractor listing laws should be weakened because of time constraints faced by general contractors in the bid submission process are entirely merit less. All parties are aware of the deadlines involved, and a general contractor has the freedom and power to dictate to subcontractors when their bids must be submitted to the general contractor to be considered for work on the project. The general contractor is free to exclude from consideration any subcontractor that does not timely submit such a bid.

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