

DAVID Y. IGE  
GOVERNOR



SARAH ALLEN  
ADMINISTRATOR  
MARA SMITH  
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

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TESTIMONY  
OF  
SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE  
ON  
GOVERNMENT OPERATIONS  
February 2, 2017, 2:45 PM

SENATE BILL 1069  
PROCUREMENT; SUBCONTRACTOR LISTING  
RELATING TO PROCUREMENT

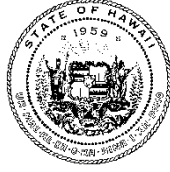
Chair Kim, Vice-Chair Ruderman, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 1069.

The State Procurement Office (SPO) offers the following comments:

A similar bill in the House of Representatives, House Bill 1229, offers a threshold of \$5 million and this bill recommends \$1 million with the additional verbiage on raising the listing of subcontractors to those who perform more than 5% of the total bid amount. The SPO does not have a position either way, but rather, asks for corroborating business analytics to substantiate these data points. Also, should this be implemented, stronger post-award contract management must be enforced for oversight over licensing issues.

Thank you.

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, FEBRUARY 2, 2017  
2:45 P.M.  
CONFERENCE ROOM 414

S.B. 1069

RELATING TO PROCUREMENT.

Chair Kim, Vice Chair Ruderman, and members of the Committee, thank you for the opportunity to submit testimony on S.B. 1069.

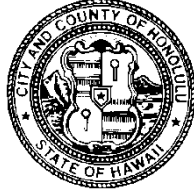
The Department of Accounting and General Services (DAGS) opposes this bill and offers the following comments for your consideration:

1. Establishing a threshold of the total estimated contract value for the requirement to list subcontractors is unlikely to significantly reduce the number of bid protests for higher dollar construction projects. Protests are far more likely for such jobs due to the potential higher payoff for a successful protest.
2. Currently, Hawaii Revised Statutes § 103D-302(b) allows the State to accept a bid, in the best interest of the State, if the value of the missing subcontractor's work is less than 1% of the total bid amount. This was intended to allow the State some

leeway to accept bids with small errors. Raising the allowance threshold to 5% on high dollar value projects may not address concerns regarding bid protests based on subcontractor listing and licensing issues. For larger construction projects, 5% of the total estimated cost can be a significant portion of the work. For example, for a \$30 million project, 5% would be a \$1,500,000 subcontract. The State may not be able to verify if the subcontractors performing the work are acceptable (i.e., based on the State Procurement Office's debarment or suspension lists or Department of Labor and Industrial Relations' suspension list, etc.), if bidders under the 5% threshold are to be treated in the same manner that bidders are currently treated under the 1% threshold. This may shift more of the burden from the contractor to the procurement staff, prolong the analysis period, and create a larger area of uncertainty where bidders are not equally transparent in listing their subcontractors.

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

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  
February 2, 2017, 2:45 PM, Conference Room 414

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

RE: SUPPORT OF SENATE BILL 1069, "RELATING TO PROCUREMENT"

The Department of Budget and Fiscal Services, City and County of Honolulu (City), **supports** Senate Bill No. 1069, Relating to Procurement.

Subcontractor listing and licensing issues have caused protests and award delays. Requiring the listing of joint contractors and subcontractors only for construction contracts with a total estimated value of more than \$1,000,000 will decrease the protests and delays experienced by the City.

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

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).

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# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 2, 2017

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

SUBJECT: **SUPPORT OF S.B. 1069, RELATING TO PROCUREMENT.** Requires public procurement construction bids to list subcontractors and joint contractors only for contracts of \$1,000,000 or more; provided that bids lacking this list may be accepted if in the State's best interest and subcontractor and joint contractor work is 5 percent or less of the total bid amount.

HEARING

DATE: February 2, 2017  
TIME: 2:45 PM  
PLACE: Capitol Room 414

Dear Chair Mercado Kim, Vice Chair Ruderman 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. The 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 is in support of S.B. 1069, Relating to Procurement, which requires that for construction contracts with a total value of more than \$1,000,000 a list of subcontractors that a bidder is required to use would be provided. In addition the bill also proposes to require that a subcontractor be listed if their portion of the work exceeds 5% of the total project. Current law under 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 or the subcontractor's work is less than 1% of the work. This bill proposes to limit which projects the subcontractor listing applies to. During the interim, the GCA conducted a Mock Bid Exercise with members of the legislature and agencies who were able to experience first-hand the types of situations that may arise moments before bid submission, including, but not limited to, receiving no bid for a certain scope of work, low bidder subcontractor's license may not be valid, last minute amendment to a sub-quote, exclusions by subcontractors, or late subcontractor bid submissions.

The GCA supports this bill because the challenges to the subcontractor listing requirements are increasing the cost of public works construction and delaying the delivery of projects due to contested bid submittals. Additionally, the mandated subcontractor listing requirement is not consistent with the *American Bar Association Model Procurement*

**Code (ABA Model Procurement Code), which Hawaii's Procurement Code is modeled after. Furthermore the federal government does not require subcontractor listing on any of their projects thus protests on this issue do not exist.** While we understand the concern with regard to bid shopping and bid peddling, we have grave concerns about whether the original intent of the subcontractor listing law is still applicable in its entirety.

### **Background of the Subcontractor Listing Requirement**

In the last decade, the subcontractor listing requirement has been used beyond its legislative intent by many non-low bidders to identify errors of the bidders who either fail to list a subcontractor or inadvertently commits a listing error in the haste to submit a bid by the deadline. As a result of the subcontractor listing requirement, the failure to list such subcontractor altogether or a subcontractor whose work would total more than one percent of the total contract could trigger an inquiry which could lead to a formal bid protest whereby a higher bidder could replace the apparent lowest bidder from being awarded the contract. These protests have historically resulted in delays in contract awards and in the event the low bidder is disqualified, there is additional cost to the agency and taxpayers if the contract is awarded to the higher bidder.

Some may argue that further training of procurement officers or review of contractor licensing laws could fix the subcontractor listing problems; however, GCA disagrees. Due to the controversial 2002 decision of the *Okada Trucking* case by the Hawaii Supreme Court and its erroneous interpretation of the general contractor's scope of work, the subcontractor listing requirement will continue to be problematic, unless some amendment to procurement requirement is made.

More recently, **the subcontractor listing has been one of the main reasons why public works projects are being awarded to non-low bidders.** Further the subcontractor listing requirement has led to administratively filed bid protests, resulting in increased cost of public projects, delay of contract award and further administrative burden for affected agencies. One agency reported that the listing law and subsequent awards to non-low bidders have cost over eleven million dollars (\$11 million) since 2005 alone.

The subcontractor listing law has resulted in increased cost for taxpayers, delay in delivery of much needed projects, and the potential lapsing of funds for important projects. We appreciate this Committee's consideration of this measure and thank you for this opportunity to **support** this important measure. GCA respectfully request the Committee to move this measure forward.



ELECTRICAL CONTRACTOR'S ASSOCIATION OF HAWAII

**NECA Hawai'i Chapter**  
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January 31, 2017

To: Senate Committee on Government Operations  
Honorable Chairperson Kim & Vice Chairman Ruderman

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

Subject: SB 1069 Relating to Procurement

Notice of Hearing

Date: Thursday, February 2, 2017  
Time: 2:45 PM  
Place: Conference Room 414  
State Capitol  
415 South Beretania Street

Dear Chair Kim 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. ECAH **strongly opposes** the intent and purpose of SB 1069 that requires public procurement construction bids to list subcontractors and joint contractors only for contracts with a total value of more than \$1,000,000 and joint contractor and the subcontractor work is less than 5% of the total bid amount. While this amount may seem small, many of our electrical contractors regularly rely on small jobs as their primary work they bid on. The \$1,000,000 is such an arbitrary amount and it would not be in the best interest of the general public. All bids should require the sublisting to ensure that no unethical activity such as bid shopping or bid peddling occur that only enriches the bidding contractor and not the State, tax payers and to the economic detriment of the subcontractor.

Based on the above, ECAH **strongly opposes** the passage of SB 1069 and encourage this committee to kill this bill.

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

# IRONWORKERS STABILIZATION FUND

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February 2, 2017

Donna Mercado Kim, Chair  
Committee on Government Operations  
State Senate  
State Capitol  
415 S. Beretania Street  
Honolulu, Hawaii 96813

Dear Honorable Chair Kim and Members of the Committee on Government Operations:

Re: Strong Opposition for SB 1069 – Relating to Procurement

We are in strong opposition of SB 1069, Relating to Procurement; that requires public procurement bids to list subcontractors and joint contractors only for contracts of \$1,000,000 or more.

The purpose of this bill strongly goes against HRS Section 103D that the legislature has passed and the State of Hawaii has used to provide a fair and open process to bidding for public funded projects. We believe that it is in the best interest of the public that they know all the subcontractors and joint contractors for any jobs. This will also ensure that the public can view if all the parties involved is licensed and has not had any wrong doing in the past. We perceive this bill is trying to hide information from the general public.

Consequently, we believe to modify the procurement law will jeopardize the integrity of the process.

We strongly oppose this measure for the working men and women of Hawaii. Thank you for your time and consideration.





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

GREGG S. SERIKAKU  
EXECUTIVE DIRECTOR

Via Email

January 31, 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: SB1069 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 SB1069.

This bill increases the threshold for contracts that require the subcontractor listing and scope of work to projects greater than \$1,000,000, and where the subcontractor's portion of the work is greater than 5%. We believe these changes will degrade the integrity of the procurement process, increase bid challenges, and incite bid shopping on projects that fall below these thresholds.

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 need to dilute the sublisting requirement by increasing the listing threshold. The proposed thresholds represent sizable contracts for many contractors, especially for the small and medium sized companies and these companies, which form the backbone of the local construction industry, should not be discounted and exposed to bid shopping.

We therefore respectfully urge the committee to hold this bill.

Respectfully yours,

A handwritten signature in black ink that reads "Gregg S. Serikaku".

Gregg S. Serikaku  
Executive Director

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

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

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

February 2, 2017

Testimony To: Senate Committee on Government Operations  
Senator Donna Mercado Kim, Chair

Presented By: Tim Lyons, President

Subject: S.B. 1069 - RELATING TO PROCUREMENT

Chair Kim and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we do not support this bill. 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

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

We do not support this bill for all of the reasons that were list in our testimony on S.B. 1067. The subcontractor listing clause is vital to the furtherance of the subcontractors who participate in bidding State and County projects. The idea in this bill is not new and, in fact, it existed at one time as an exception for the University of Hawaii procurement system. It was a failure. As a matter of fact, after two (2) or three (3) years it was repealed. The reason it was repealed is because what occurred was exactly what we predicted. There was an incredible amount of bid shopping and bid chiseling by general contractors against subcontractors on jobs that were filed and as we predicted, so much so that some contractors declined to participate in UH jobs. It was on more than one occasion that UH complained that they were not getting a sufficient number of bidders for certain jobs.

The other negative consequence of this bill is that it excepts the subcontractor listing clause when a contractor's work is 5% or less of the total project. This clause particularly discriminates against those subcontractors who perform work on a project that tend to be of lower volume. A good example of that might be C-7 or C-21 flooring contractor, a C51 tile contractor, a C14 sign contractor or again, depending on the design a C5 siding application contractor. With this 5% exception some trades could be constantly shopped or bid chiseled because they come under the 5%. We submit to you that this is incredibly unfair to those subcontractors and as such we cannot recommend this bill.

Thank you.