



**STATE OF HAWAII**  
**STATE PROCUREMENT OFFICE**

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TESTIMONY  
OF  
BONNIE KAHAKUI, ACTING ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE  
ON  
GOVERNMENT OPERATIONS  
FEBRUARY 1, 2022; 3:00 PM

SENATE BILL 2681  
RELATING TO PROCUREMENT

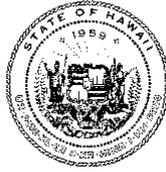
Chair Moriwaki, Vice Chair Dela Cruz, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 2681. The State Procurement Office (SPO) opposes the language that would allow vendors an additional twenty-four (24) hours to submit corrected bids.

The SPO provides the following comments:

- Section 3-122-31(c)(1), Hawaii Administrative Rules allows for corrections for missing signatures, typographical and arithmetical errors, or other mistakes that is a minor informality which does not affect price, quantity, delivery, or contractual conditions.
- Section 3-122-31(c)(1)(C), Hawaii Administrative Rules, further allows the procurement officer to waive, or be corrected, mistakes if it is in the best interest of the State.
- The 24-hour allowance will add another step in the procurement process.
- The 24-hour allowance will add another component for which vendors can protest.
- This is unfair to bidders who submitted accurate and timely responses.
- The bill addresses only construction and does not afford goods and services, procured by chapter 103D-302, HRS, the same benefits.
- The bill does not address bid shopping as the bill is intended.

Consequently, the bill is not necessary and only adds to the complexity of construction procurement.

Thank you.



CURT T. OTAGURO  
COMPTROLLER  
AUDREY HIDANO  
DEPUTY COMPTROLLER

**STATE OF HAWAII**  
**DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES**  
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY  
OF  
CURT T. OTAGURO, COMPTROLLER  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
TO THE  
SENATE COMMITTEE  
ON  
GOVERNMENT OPERATIONS

TUESDAY, FEBRUARY 1, 2022, 3:00 P.M.  
VIA VIDEOCONFERENCE, STATE CAPITOL

S.B. 2681

RELATING TO PROCUREMENT

Chair Moriwaki, Vice Chair Dela Cruz, and members of the Committee, thank you for the opportunity to submit testimony on S.B. 2681. The Department of Accounting and General Services (DAGS) opposes this bill, and offers the following comments.

This bill increases the responsibilities of procurement agencies by inserting an additional bidding step and creating two bidding deadlines (bid receipt, then bid opening) requiring administering as well as additional potential interpretation of “immaterial or technical information” for corrections.

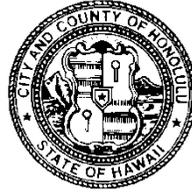
Section 103D-302, Hawaii Revised Statutes, already allows that bids that do not comply with the sub-list requirement may be accepted if acceptance is in the best interest of the state and the value of the work to be performed is equal to or less than one percent of the total bid amount.

DAGS believes contractors’ demonstration of their capacity to perform begins with assembling their bids in a manner to ensure timely, complete, and accurate submittal information

by the bid opening deadline. The insertion of a “buffer” time period to allow for corrections further enables bidders to wait until the last minute to assemble their bids without taking extra time to ensure their submittals are suitably finalized.

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

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  
**February 1, 2022, 3:00 PM, Conference Room 016 and Videoconference**

TO: The Honorable Sharon Y. Moriwaki, Chair  
and Members of the Senate Committee on Government Operations

RE: OPPOSITION OF SENATE BILL 2681, RELATING TO PROCUREMENT

The Department of Budget and Fiscal Services, City and County of Honolulu (City), **opposes** Senate Bill (SB) 2681, Relating to Procurement.

The Hawaii Administrative Rules (HAR) §3-122-31 allows 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 proposed change to the Hawaii Revised Statutes (HRS) 103D-302 is not required as the administrative rules already allow for a correction to immaterial information.

Pursuant to HRS Chapter 444, the definition of a contractor means “means any person who by oneself or through others offers to undertake, or holds oneself out as being able to undertake, or does undertake to alter, add to, subtract from, improve, enhance, or beautify any realty or construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other structure, project, development, or improvement, or do any part thereof, including the erection of scaffolding or other structures or works in connection therewith.” The addition in Section 2, HRS 103D-302(j) appears to violate HRS Chapter 444 and contradict the Hearings Officer’s findings of fact, conclusions of law, and decision in the 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*.

For the reasons stated above, the City respectfully opposes Senate Bill 2681.

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

January 31, 2022

TO: HONORABLE SHARON MORIWAKI, CHAIR, HONORABLE DONOVAN DELA CRUZ, VICE CHAIR, COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **SUPPORT OF S.B. 2681, 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. 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".

#### HEARING

DATE: Tuesday, February 1, 2022  
TIME: 3:00 p.m.  
PLACE: Capitol Room 016

Dear Chair Moriwaki, Vice Chair Dela Cruz 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 is in **support** of S.B. 2681, 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.

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 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/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)

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.

The definition of “immaterial or technical information” is modeled after Utah’s Procurement Code. They define the term “immaterial error”: [https://le.utah.gov/xcode/Title63g/Chapter6a/C63G-6a\\_1800010118000101.pdf](https://le.utah.gov/xcode/Title63g/Chapter6a/C63G-6a_1800010118000101.pdf)

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

Thank you for this 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***

February 1, 2022

Testimony To: Senate Committee on Government Operations  
Senator Sharon Y. Moriwaki, Chair

Presented By: Tim Lyons, President

Subject: S.B. 2681 – RELATING TO PROCUREMENT

Chair Moriwaki 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 support the intent of 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 can support the intent.

We do ask however that there be one (1) minor stylistic change on page 4 in the underlined portions of (b)(2) and it should read as follows:

"(2) allow the bidder to clarify or correct immaterial or technical information required by paragraph (1) for up to twenty-four (24) hours after the bid submission deadline; provided that any changes to the nature and scope of work as listed and any additions or substitutions of listed joint subcontractors shall be prohibited.

Our wording just attempts to make it clear that the prohibition applies not only to substitutions but also to any changes in the nature and scope of work as listed.

We would further respectfully ask the Committee to consider a two (2) year sunset clause. This is an extremely important area to the financial health of subcontractors and while we hope it satisfies the generals, we respectfully request a trial run and to that extent, please insert a sunset clause. We ask that the Committee not indulge any other changes that might alter this specificity of this particular

version inasmuch as the versions have been worked on for several years and a deviation from that, we believe would be in bad faith.

Thank you.



ELECTRICAL CONTRACTOR'S ASSOCIATION OF HAWAI'I

NECA Hawai'i Chapter

1286 Kalani Street, Suite B-203

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January 31, 2022

To: Senate Committee on Government Operations  
Honorable Chairperson Senator Sharon Moriwaki  
Vice Chairman Senator Donovan Dela Cruz

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

Subject: SB 2681 Relating to Procurement

Notice of Hearing

Date: Tuesday, February 1, 2022  
Time: 3:00 PM  
Place: Conference Room 016 and Videoconference  
State Capitol  
415 South Beretania Street

Dear Chair Moriwaki 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. In the spirit of cooperation, ECAH would support the intent and purpose of SB 2681 to allow the correction of immaterial or technical information for up to 24 hours after bid submission provided it sunsets after two years. This will allow the bidding contractors and the procurement agencies sufficient time to address bid protests.

Based on the above, ECAH **supports** the passage of SB 2681 **with a provision to sunset after two years.**

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

Al Itamoto



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

GREGG S. SERIKAKU  
EXECUTIVE DIRECTOR

January 31, 2022

Senator Y. Sharon Moriwaki, Chair  
Senator Donovan M. Dela Cruz, Vice-Chair  
Senate Committee on Government Operations

Chair Moriwaki, Vice Chair Dela Cruz, and Members of the Committee:

**SUBJECT: SB2681 RELATING TO PROCUREMENT**

My name is Gregg Serikaku, Executive Director for the Plumbing and Mechanical Contractors Association of Hawaii, and we are the State's largest association representing contractors in the plumbing, air conditioning, refrigeration, steamfitter, and fire sprinkler trades throughout Hawaii.

We are very concerned that providing bidders an allowance to correct non-material or technical information will open the door to the undesired expansion of allowances in the future. Such expansion would increase the likelihood of bid shopping and would be strongly opposed by our Association.

The current bill contains the following critical provisions which must be maintained in order to preserve the protections that the subcontractor listing affords:

- The sublisting and scope of work must be submitted at the time of bid.
- No additions, substitutions, or changes in scope of work are to be allowed.
- Allowed changes must be immaterial, must not affect substance, and must not be prejudicial to other vendors.
- Bids must not be opened until the allowed correction period expires.

If this committee is determined to move this bill forward, we recommend that a sunset period be added so that the stakeholders can assess the effect of the proposed changes.

Thank you for this opportunity to provide our testimony.

Respectfully,

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

Gregg S. Serikaku  
Executive Director

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

Carpet, Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund

January 31, 2022

Senator Sharon Y. Moriwaki, Chair  
Senate Committee on Government Operations  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: Senate Bill 2681 (Relating To Procurement)  
Hearing date: February 1, 2022  
Time: 3:00 p.m.

Dear Chair Moriwaki 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 Senate Bill 2681. 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.

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 implies that subcontractor listing is a significant problem causing delays and increased cost for public construction projects. A task force convened pursuant to Senate Concurrent Resolution 92, S.D.2 (2013) studied the issue of bid protests related to subcontractor listing. The 16 page report and 91 pages of attachments 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.

The reason for our opposition to this measure is that 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 §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.

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

Enacting this Bill, which creates entirely new terms and procedures not currently used in the Procurement Code, will only lead to more confusion in the procurement process. Potentially, this confusion could actually result in an increase in the number of bid protests.

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