



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Ways and Means
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By
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SB 2600 SD 1 – RELATING TO PROCUREMENT

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee:

Thank you for the opportunity to present testimony on SB 2600 SD1 – Relating to Procurement. The University of Hawai'i ("University") supports this measure but requests amendments to make implementation less complicated and reduce the risk of protests.

SB 2600 SD1 accurately highlights the problems and costs borne by state agencies that are associated with the provision in the Hawai'i Procurement Code that requires a listing of all subcontractors or joint contractors as part of a bid proposal in competitive sealed bids for construction. Such problems and costs are in the form of protests and/or the lost opportunity to award to the otherwise lowest bidder. Presumably, this is why the federal government does not require such a listing.

Generally speaking, general contractors desire to have time after a bid is submitted to finalize the subcontractor/joint contractor list; on the other hand, subcontractors believe this time will be used by the general contractor to bid-shop between subcontractors. This has been a long standing dispute that leaves the procuring agency "holding the bag" for any costs associated with errors and/or protests arising out of a subcontractor list submitted at the time of bid proposal. Thus, many lawmakers have questioned the value of requiring a subcontractor listing at the time of proposal – which is consistent with recent testimony by the Hawai'i State Procurement Office that promotes the elimination of any requirement for the listing of subcontractors at the time of proposal. However, there is concern that such a drastic change in the law would have unintended negative impact on subcontractors.

To assist the Legislature with evaluating the impact of eliminating or reducing the subcontractor listing requirement, this measure seeks to authorize the University of Hawai'i to conduct a 2-year pilot project that (1) only requires a subcontractor/joint-contractor listing at the time of proposal for those construction projects with a cost estimate greater than \$3 million, and (2) for those projects with a cost estimate less than \$3 million, only requires a listing of subcontractors/joint-contractors in the following trades: electrical, plumbing, asbestos, elevators, and boilermakers.

The University desires to participate in the pilot program to determine any impact or hardships caused by the elimination of the subcontractor listing requirement. However, to assist with the administration and implementation of the project, the University requests that the listing requirements for five (5) specific trades in projects that are estimated to be less than \$3 million be removed altogether. Based on our experience, these five trades are the primary source of almost all protests under the current law, which effectively neutralizes the significance of the pilot program. Furthermore, changes to the subcontractor listing requirements for projects that are less than \$3 million will only add to the administrative review process and will result in the introduction of new grounds for protests based on the essential features of the new subcontractor listing requirements.

The University proposes to replace Section 2 (a) of the measure in its entirety with the following:

SECTION 2. (a) Notwithstanding anything in the law to the contrary, including but not limited to Chapter 103D, Hawaii Revised Statutes, there is established the subcontractor listing pilot program to be conducted by the University of Hawaii. Under this program, the University of Hawaii shall not require a listing of joint contractors and/or subcontractors to be included in competitive sealed bids for construction where the estimated contract value is less than \$3,000,000.

For invitations for competitive sealed bids for construction where the estimated contract value is \$3,000,000 and above, the University will continue to require a listing of joint contractors and/or subcontractors be included with the bids as presently required under Chapter 103D, Hawaii Revised Statutes.

Based on the foregoing, the University supports SB 2600 SD1 but requests the proposed amendments to make implementation of the bill less complicated and reduce the potential for further protests.