

The Case For SUBCONTRACTOR LISTING

Good for Hawaii, Good for the Procurement Officer

Prepared by the

SUBCONTRACTORS ASSOCIATION OF HAWAII

In coordination with its members

- **Electrical Contractors Association of Hawaii**
- **Hawaii Flooring Association**
- **Hawaii Wall & Ceiling Industry Association**
- **Pacific Insulation Contractors Association**
- **Painting & Decorating Contractors Association**
- **Plumbing & Mechanical Contractors Association of Hawaii**
- **Roofing Contractors Association of Hawaii**
- **Sheet Metal & Air Conditioning Contractors' National Association - Hawaii Chapter**
- **Tile Contractors Promotional Program**

Procurement Officers have a *tough job*. They must navigate a complicated procurement code in pursuit of ensuring a fair and balanced bid process that promotes competition while ensuring taxpayer dollars are well spent.

One of the most debated requirements of Hawaii’s Procurement Code is the listing of subcontractors at time of bid – more commonly known as sublisting. This means the general (or prime) contractor must list the subcontractors they plan to employ on the project and that they *cannot* use other subcontractors, unless there is a compelling reason to do so. This prevents general contractors from starting bidding wars between subcontractors – a common practice subcontractors struggle with – and provides Procurement Officers assurance that the companies that perform public works projects are properly licensed, insured and bonded.

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Opponents of the subcontractor listing requirement note that the Federal procurement system does not require sublisting and they make unsubstantiated claims that it opens the process to unnecessary bid protests. But they fail to acknowledge that many subcontractors do not bid Federal projects for the very fear of bid shopping.

Nor do they mention that a 2012 taskforce of Hawaii construction professionals found that only an average of 6.3% of projects were protested in 2013 and 2014 – with a mere average cost increase of 0.17%. Subcontractor listing was only *one* reason for these protests, making the opponents’ argument ineffectual.

Awarding contracts without properly vetting subcontractors would be similar to buying a car without checking first to see if it had an engine or seats or a steering wheel.

Further, a new law that took effect in 2013 – supported by subcontractors – cut protests by over half (from 36 protests in 2012 to only 14 protests in 2014).

Opponents of subcontractor listing fail to point out that the only party to benefit from any savings as a result of bid shopping is the prime contractor, because they do not refund savings to the agency or taxpayer.

The fact is that the various subcontractor trades perform the overwhelming majority of work on most projects, which makes it paramount that these companies are properly vetted. Awarding contracts without properly vetting subcontractors would be similar to buying a car without checking first to see if it had an engine or seats or a steering wheel.

The Hawaii State Legislature realized the importance of subcontractor listing and wrote extensive requirements into law to promote economy, efficiency, effectiveness, and impartiality. They also

detailed the importance of Procurement Officers and their respective responsibilities. This was all done in an effort to provide governmental agencies, government contractors, and the public, a consistent, open, fair and transparent method of procuring goods, services and construction. The Code's points out "[T]o permit a substantial change in a proposal after bids have been opened and made public, would be contrary to public policy, and would tend to open the door to fraudulent and corrupt practices."

One of the basic principles of the sublisting law is that the public is entitled to know what they are paying for, and who will be paid when the agency accepts a bid.

Through review of the sublisting by the procurement officer, the public can observe and be assured that public funds will be used to pay for specific scopes of services provided by properly licensed contractors who have the requisite experience to complete the project.

A few of the most important responsibilities outlined in the State of Hawaii Procurement Code that sublisting helps Procurement Officers fulfill their mission are below:

- Encourage economic competition by:
 - Ensuring that all persons are afforded an equal opportunity to compete in a fair and open environment;
- Avoid the intent and appearance of unethical behavior;
- All parties involved in the negotiation, performance, or administration of state contracts shall act in good faith.

The listing law also helps Procurement Officers achieve a fair process by discouraging bid shopping.

Why is bidding shopping bad? Because it...

- Reduces competition by discouraging the submission of bids by qualified subcontractors who do not want to "play that game"
- Increases bid prices due to subcontractors who need to inflate bids to account for bid shopping by general contractors

- Jeopardizes the financial stability of subcontractors
- Results in the prime contractor utilizing subcontractors who are willing to give the price, many times because the subcontractor has cash flow problems. This creates more issues such as:
 - Projects with more change orders due to desperate subcontractors trying to nickel and dime to avoid losing money
 - Substandard projects due to subcontractors who need to cut corners by cheating the wage laws or using substandard workmanship or materials to complete their portion of the project at the lower price the GC asked them to take
 - Results in projects that are delayed due to disputes between the GC and subcontractor or the need to rework the project, which ultimately causes a delay of final payments to both the GC and all subcontractors on the project.

Bid shopping is such a pervasive practice that the national organizations of the Associated General Contractors, Associated Specialty Contractors and the American Subcontractors Association have jointly denounced the practice of bid shopping as unethical and unwarranted in the construction industry.

Hawaii got it right when it required sublisting in the Procurement Code. It is better for the State, better for the Procurement Officer and better for thousands of small businesses across the state who rely on sublisting to ensure a fair and competitive process.

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