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# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the delivery and  
2 award of public works construction projects can be hindered by  
3 bid challenges resulting in a lapse of funding and other  
4 procurement issues. The legislature further finds that the  
5 execution and completion of public works projects are often  
6 delayed due to bid protests by non-lowest bidders challenging  
7 technical mistakes in the lowest bidder's proposal. As a result  
8 of bid protests, projects are delayed, funding lapses, and bids  
9 are awarded to non-low bidders, all of which increase final  
10 project costs.

11           Specifically, section 103D-302, Hawaii Revised Statutes,  
12 requires that all subcontractors or joint contractors to be used  
13 on a public works project be listed, along with their scope of  
14 work on the bid proposal submitted to any state or county agency  
15 subject to the procurement code. The legislature finds that  
16 many recent bid protests have been based on subcontractor  
17 listing and licensing issues, including where a bidder has



1 failed to list a required subcontractor or when a listed  
2 subcontractor did not possess the appropriate license and was  
3 not qualified to perform the work.

4 The legislature further finds that time constraints between  
5 the time a bidder receives all subcontractor bids and the bid  
6 submission deadline can cause inadvertent failure to list a  
7 required subcontractor or the listing of an improperly licensed  
8 subcontractor in a bid, resulting in a bid protest. Often,  
9 inadvertent errors occur due to the complexity of the laws  
10 regarding contractor licenses under chapter 444, Hawaii Revised  
11 Statutes; title 16, Hawaii Administrative Rules; and judicial,  
12 quasi-judicial, and agency interpretations of these laws and  
13 rules. The contractors license board currently recognizes over  
14 one hundred different specialty contractor licenses that a prime  
15 bidder must sort through to determine the appropriate  
16 subcontractor specialty to be listed on a bid.

17 In comparison, the federal government does not require the  
18 listing of subcontractors on any bid proposal. Furthermore, the  
19 2000 American Bar Association's Model Procurement Code, the  
20 model for Hawaii's Public Procurement Code, does not include  
21 such a subcontractor listing requirement. In fact, the federal



1 government and twenty states do not require a general  
2 contractor's license to bid on or perform construction work.

3       The purpose of this Act is to require the listing of joint  
4 contractors and subcontractors for construction contracts with a  
5 total value of more than \$           , provided that a construction  
6 bid that does not comply with this requirement may be accepted  
7 if it is in the best interest of the State and the value of the  
8 work to be performed by a subcontractor is equal to or less than  
9       per cent of the total bid amount. This Act will reduce the  
10 number of subcontractors that must be listed in a bid proposal,  
11 thereby reducing the number of opportunities to challenge bids  
12 on the basis of subcontractor listing errors. This Act is not  
13 intended to change in any way the statutory requirement to use  
14 licensed subcontractors under chapter 444, Hawaii Revised  
15 Statutes.

16       SECTION 2. Section 103D-302, Hawaii Revised Statutes, is  
17 amended by amending subsection (b) to read as follows:

18       "(b) An invitation for bids shall be issued, and shall  
19 include a purchase description and all contractual terms and  
20 conditions applicable to the procurement. If the invitation for  
21 bids is for construction[7] with a total estimated contract



1 value of more than \$ \_\_\_\_\_, it shall specify that all bids  
2 include the name of each person or firm to be engaged by the  
3 bidder as a joint contractor or subcontractor in the performance  
4 of the contract and the nature and scope of the work to be  
5 performed by each. Construction bids that do not comply with  
6 this requirement may be accepted if acceptance is in the best  
7 interest of the State and the value of the work to be performed  
8 by the joint contractor or subcontractor is equal to or less  
9 than ~~[one]~~ \_\_\_\_\_ per cent of the total bid amount."

10 SECTION 3. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 4. This Act shall take effect on July 1, 2050.



**Report Title:**

Procurement; Subcontractor Listing

**Description:**

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 and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than an unspecified per cent of the total bid amount. Effective 7/1/2050. (SD1)

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