
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 that result in a lapse of funding and other
4 procurement issues. The legislature further finds that the
5 execution and completion of public works construction projects
6 are often delayed when a party who was not the lowest bidder
7 challenges technical mistakes in the lowest bidder's proposal.
8 As a result of these bid protests, projects become delayed,
9 funding lapses, or subsequent awarding of the contract to a
10 party other than the lowest bidder increases final project
11 costs.

12 More specifically, section 103D-302, Hawaii Revised
13 Statutes, requires a bidder who submits a bid proposal to any
14 state or county agency, pursuant to the procurement code, to
15 list all subcontractors or joint contractors that the bidder
16 will use in the performance of the contract, along with the
17 nature and scope of the work to be performed by each



1 subcontractor or joint contractor. The legislature also finds
2 that many recent bid protests have been based on subcontractor
3 listing and licensing issues, including where a bidder has
4 failed to list a required subcontractor or when a listed
5 subcontractor, unbeknownst to the general contractor, did not
6 possess the appropriate license and was not qualified to perform
7 the work.

8 The legislature further finds that time constraints between
9 the time a bidder receives all subcontractor bids and the bid
10 submission deadline can cause an inadvertent failure to list a
11 required subcontractor or the listing of an improperly licensed
12 subcontractor in a bid, resulting in a bid protest. Another
13 reason for these errors is the complexity of the laws relating
14 to contractor licenses under chapter 444, Hawaii Revised
15 Statutes; chapter 77 of title 16, Hawaii Administrative Rules;
16 and judicial, quasi-judicial, and agency interpretations of the
17 applicable laws and rules. The contractors license board
18 currently recognizes over one hundred different specialty
19 contractor licenses that a prime bidder must sort through to
20 determine the appropriate subcontractor specialty to be listed



1 on a bid. For these reasons, bidders and subcontractors
2 sometimes misunderstand the applicable licensing requirements.

3 The legislature notes that the federal government, on the
4 other hand, does not require the listing of subcontractors on
5 any bid proposal. In fact, the federal government does not
6 require a general contractor's license to bid on or perform
7 construction work; nor do more than twenty states. The
8 legislature further recognizes that the American Bar
9 Association's 2000 Model Procurement Code for State and Local
10 Governments, upon which Hawaii's procurement code is based, does
11 not include a subcontractor listing requirement.

12 The purpose of this Act is to require:

13 (1) The listing of subcontractors or joint contractors for
14 construction contracts only where the total bid value
15 may be \$5,000,000 or more; and

16 (2) The listing of any subcontractors or joint contractors
17 representing only what is known as the "five sacred
18 trades", which include electrical; plumbing; asbestos;
19 elevator; and boiler, hot-water heating, and steam
20 fitting contractors, for construction contracts where
21 the total bid value may be less than \$5,000,000.



1 It is the intent of the legislature that this Act will have
2 the effect of reducing the number of subcontractors or joint
3 contractors that must be listed in a bid proposal, thereby
4 reducing the number of opportunities to challenge bids based on
5 alleged subcontractor listing errors. The legislature does not
6 intend that this Act in any way change the statutory requirement
7 to use licensed subcontractors or joint contractors pursuant to
8 chapter 444, Hawaii Revised Statutes.

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

11 "(b) An invitation for bids shall be issued, and shall
12 include a purchase description and all contractual terms and
13 conditions applicable to the procurement. If the invitation for
14 bids is for construction[7] where the total bid value may be
15 \$5,000,000 or more, it shall specify that all bids include the
16 name of each person or firm to be engaged by the bidder as a
17 joint contractor or subcontractor in the performance of the
18 contract and the nature and scope of the work to be performed by
19 each. If the invitation for bids is for construction where the
20 total bid value may be less than \$5,000,000, the invitation
21 shall specify that all bids include the name of each person or



1 firm to be engaged by the bidder as a joint contractor or
 2 subcontractor in the performance of the contract and the nature
 3 and scope of the work to be performed by each if the joint
 4 contractor or subcontractor is engaged in electrical; plumbing;
 5 asbestos; elevator; or boiler, hot-water heating, or steam
 6 fitting work. Construction bids that do not comply with this
 7 requirement may be accepted if acceptance is in the best
 8 interest of the State and the value of the work to be performed
 9 by the joint contractor or subcontractor is equal to or less
 10 than one per cent of the total bid amount."

11 SECTION 3. This Act does not affect rights and duties that
 12 matured, penalties that were incurred, and proceedings that were
 13 begun before its effective date.

14 SECTION 4. Statutory material to be repealed is bracketed
 15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect upon its approval.
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INTRODUCED BY:

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Report Title:

Procurement; Construction; Bids; Contractors; Subcontractors;
Joint Contractors

Description:

Requires that bid proposals for construction contracts list subcontractors and joint contractors where the total bid value may be \$5,000,000 or more. Requires the listing of subcontractors and joint contractors where the total bid value may be less than \$5,000,000, but only if electrical; plumbing; asbestos; elevator; or boiler, hot-water heating, or steam fitting work is involved.

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