

JAN 25 2017

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 bid
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 solely on subcontractor
17 listing and licensing issues, including where a bidder has



1 failed to list a required subcontractor or that the 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 state 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 \$1,000,000 or more, 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 five 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 will not
13 in any way change the statutory requirement to use licensed
14 subcontractors under chapter 444, Hawaii Revised Statutes.

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

17 "(b) An invitation for bids shall be issued, and shall
18 include a purchase description and all contractual terms and
19 conditions applicable to the procurement. If the invitation for
20 bids is for construction[7] with a total estimated contract
21 value of \$1,000,000 or more, it shall specify that all bids



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

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 Statutory material to be repealed is bracketed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

11 SECTION 4. This Act shall take effect upon its approval.

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S.B. NO. 1069

Report Title:

Procurement; Subcontractor Listing

Description:

Requires public procurement construction bids to list subcontractors and joint contractors only for contracts of \$1,000,000 or more; provided that bids lacking this list may be accepted if in the State's best interest and subcontractor and joint contractor work is 5 percent or less of the total bid amount.

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