

JAN 19 2018

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
9 awards to non-low bidders increase final project costs.

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



1 listed subcontractor, unbeknownst to the general contractor, did
2 not possess the appropriate license and was not qualified to
3 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 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. Hence, bidders
17 and subcontractors sometimes misunderstand the licensing
18 requirements.

19 In comparison, the federal government does not require the
20 listing of subcontractors on any bid proposal. In fact, the
21 federal government does not require a general contractor's



1 license to bid on or perform construction work, nor do over
2 twenty states. The legislature further recognizes that the 2000
3 American Bar Association's Model Procurement Code, the model for
4 Hawaii's procurement code, does not include such a subcontractor
5 listing requirement.

6 Therefore, the legislature finds that it is necessary to
7 clarify the State's procurement code to reduce the number of
8 subcontractors that must be listed in a bid proposal, thereby
9 reducing the number of opportunities to challenge bids on the
10 basis of subcontractor listing errors. However, the legislature
11 also finds that clarifying the State's procurement code should
12 not in any way change the statutory requirement to use licensed
13 subcontractors under chapter 444, Hawaii Revised Statutes.

14 Accordingly, the purpose of this Act is to:

- 15 (1) Require the listing of all joint contractors and
16 subcontractors for construction contracts subject to
17 the procurement code where the estimated contract
18 value is more than \$5,000,000; and
19 (2) Require the listing of the joint contractors and
20 subcontractors representing what are known as the five
21 sacred trades, electrical, plumbing, asbestos,



1 elevators, and boilermaker, for construction contracts
2 subject to the procurement code where the estimated
3 contract value is less than \$5,000,000.

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

6 "(b) An invitation for bids shall be issued, and shall
7 include a purchase description and all contractual terms and
8 conditions applicable to the procurement. If the invitation for
9 bids is for construction[7] with a total estimated contract
10 value of \$5,000,000 or higher, it shall specify that all bids
11 include the name of each person or firm to be engaged by the
12 bidder as a joint contractor or subcontractor in the performance
13 of the contract and the nature and scope of the work to be
14 performed by each. If the invitation for bids is for
15 construction with a total estimated contract value of less than
16 \$5,000,000, it shall specify that all bids include the name of
17 each person or firm to be engaged by the bidder as a joint
18 contractor or subcontractor in the performance of the contract
19 and the nature and scope of the work if the joint contractor or
20 subcontractor work involves any of the following trades:
21 electrical, plumbing, asbestos, elevators, or boilermaker.



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1 Construction bids that do not comply with this requirement may
 2 be accepted if acceptance is in the best interest of the State
 3 and the value of the work to be performed by the joint
 4 contractor or subcontractor is equal to or less than one per
 5 cent of the total bid amount."

6 SECTION 3. Statutory material to be repealed is bracketed
 7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect upon its approval.
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S.B. NO. 2600

Report Title:

Procurement; Contract Bids; Subcontractor Listing

Description:

Requires the listing of all joint contractors and subcontractors for construction contracts subject to the procurement code where the total estimated contract value is \$5,000,000 or higher.

Requires the listing of joint contractors and subcontractors in the trades of electrical, plumbing, asbestos, elevators and boilermaker for construction contracts subject to the procurement code where the total estimated contract value is less than \$5,000,000.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

