
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. The legislature also
11 finds that clarifying the State's procurement code should not in
12 any way change the statutory requirement to use licensed
13 subcontractors under chapter 444, Hawaii Revised Statutes.

14 However, the legislature understands that implementing such
15 a change to the procurement bidding process could create
16 unforeseen difficulties and have unintended consequences.
17 Therefore, the legislature finds that it is prudent to first
18 test these changes on a smaller scale to determine their overall
19 effectiveness in reducing wasted time and resources in the
20 procurement process.



1 Accordingly, the purpose of this Act is to create a pilot
2 program for subcontractor listing to be conducted by the
3 University of Hawaii.

4 SECTION 2. (a) Notwithstanding any law to the contrary,
5 including but not limited to chapter 103D, Hawaii Revised
6 Statutes, there is established the subcontractor listing pilot
7 program to be conducted by the University of Hawaii. Under this
8 program, the University of Hawaii shall not require a listing of
9 joint contractors or subcontractors to be included in
10 competitive sealed bids for construction where the estimated
11 contract value is less than \$3,000,000.

12 (b) No later than twenty days prior to the convening of
13 the regular session of 2020, the University of Hawaii shall
14 submit a report to the legislature on the cost effectiveness of,
15 and any efficiencies realized as a result of, the pilot program.

16 SECTION 3. This Act shall take effect on July 1, 2050, and
17 shall be repealed on June 30, 2020.



S.B. NO. 2600 S.D. 2

Report Title:

Subcontractor Listing Pilot Program; UH

Description:

Establishes the subcontractor listing pilot program to be conducted by the University of Hawaii. Requires a report to the legislature. Effective 7/1/2050. Repealed 6/30/2020. (SD2)

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