

JAN 22 2021

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 amend the State's procurement code to allow greater flexibility
8 in the listing of subcontractors for construction contracts,
9 thereby reducing the number of opportunities to challenge bids
10 on the basis of subcontractor listing errors. However, the
11 legislature also finds that amending the State's procurement
12 code should not in any way change the statutory requirement to
13 use licensed subcontractors under chapter 444, Hawaii Revised
14 Statutes.

15 Accordingly, the purpose of this Act is to amend the
16 procurement code to require bidders for construction contracts
17 to submit the final list of all joint contractors and
18 subcontractors no later than five days after the bid submission
19 deadline.

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



1 "(b) An invitation for bids shall be issued, and shall
2 include a purchase description and all contractual terms and
3 conditions applicable to the procurement. If the invitation for
4 bids is for construction, it shall specify that [~~all bids~~
5 ~~include~~] the final list of the name of each person or firm to be
6 engaged by the bidder as a joint contractor or subcontractor in
7 the performance of the contract and the nature and scope of the
8 work to be performed by each[+] shall be submitted no later than
9 five days after the bid submission deadline. Construction bids
10 that do not comply with this requirement may be accepted if
11 acceptance is in the best interest of the State and the value of
12 the work to be performed by the joint contractor or
13 subcontractor is equal to or less than one per cent of the total
14 bid amount."

15 SECTION 3. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: *Rosemary H Baker*
By Request



S.B. NO. 625

Report Title:

Procurement; Contract Bids; Joint Contractor and Subcontractor Listing

Description:

Requires bidders for construction contracts to submit the final list of all joint contractors and subcontractors no later than five days after the bid submission deadline.

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