
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 Hawaii public
2 procurement code currently requires general contractors to
3 disclose the subcontractors they intend to use on a project.
4 The intent of this requirement is to deter bid shopping--the
5 practice of low-bidding general contractors unethically
6 extracting lower prices from subcontractors under the threat of
7 replacement. Although stakeholders agree that the disclosure
8 requirement accomplishes this goal, the legislature notes that
9 the federal government and a vast majority of states do not have
10 a similar disclosure requirement in their procurement processes.

11 The legislature further finds that this disclosure
12 requirement has the unintended consequence of increasing the
13 number and complexity of construction protests. The state
14 procurement office's review of Hawaii procurement laws found
15 that most protests allege technical issues stemming from the
16 subcontractor listing requirement. These technical mistakes
17 include instances where a bidder failed to list a required



1 subcontractor or when a listed subcontractor did not possess the
2 appropriate license and was not qualified to perform the work.

3 Recommendation III-2 of the state procurement office's
4 review of Hawaii procurement laws eliminates the requirement for
5 bidders to disclose the nature and scope of work expected to be
6 performed by a subcontractor. However, the legislature further
7 finds that this issue with the subcontractor listing may be
8 addressed instead by providing prime contractors with additional
9 time to correct immaterial or technical issues with
10 subcontractor listings.

11 Inadvertent errors can occur due to the complexity of the
12 laws regarding contractor licenses under chapter 444, Hawaii
13 Revised Statutes; title 16, Hawaii Administrative Rules; and the
14 judicial, quasi-judicial, and agency interpretations of these
15 laws and rules. Time constraints from when a bidder receives
16 the bids from all of its subcontractors up until the procuring
17 agency's bid submission deadline may also cause inadvertent
18 failures to list a required subcontractor or the listing of
19 erroneous subcontractor license numbers in a bid. The
20 legislature further recognizes that the provision of additional
21 time for prime contractors to correct their subcontractor



1 listings would facilitate the legislature's intent of ensuring
2 that subcontractors are listed properly on the bid submittal and
3 are licensed, while maintaining the integrity of the bid
4 process.

5 The purpose of this Act is to minimize bid challenges,
6 costs, and delays of public works construction projects by:

- 7 (1) Allowing a bidder for a public works construction
8 project to clarify and correct immaterial or technical
9 issues with subcontractor listings for up to twenty-
10 four hours after the bid submission deadline;
- 11 (2) Requiring that bids for construction be publicly
12 opened no sooner than twenty-four hours after the bid
13 submission deadline; and
- 14 (3) Defining "immaterial or technical information".

15 SECTION 2. Section 103D-302, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§103D-302 Competitive sealed bidding.** (a) Contracts
18 shall be awarded by competitive sealed bidding except as
19 otherwise provided in section 103D-301. Awards of contracts by
20 competitive sealed bidding may be made after single or multi-
21 step bidding. Competitive sealed bidding does not include



1 negotiations with bidders after the receipt and opening of bids.
2 Award is based on the criteria set forth in the invitation for
3 bids.

4 (b) An invitation for bids shall be issued[~~r~~] and shall
5 include a purchase description and all contractual terms and
6 conditions applicable to the procurement. If the invitation for
7 bids is for construction, it shall [~~specify~~]:

8 (1) Specify that all bids include the name of each person
9 or firm to be engaged by the bidder as a joint
10 contractor or subcontractor in the performance of the
11 contract and the nature and scope of the work to be
12 performed by each[~~r~~]; and

13 (2) Allow the bidder to clarify or correct immaterial or
14 technical information required by paragraph (1) for up
15 to twenty-four hours after the bid submission
16 deadline; provided that any changes to the nature and
17 scope of work and any additions or substitutions of
18 listed joint subcontractors shall be prohibited.

19 Construction bids that do not comply with this requirement may
20 be accepted if acceptance is in the best interest of the State
21 and the value of the work to be performed by the joint



1 contractor or subcontractor is equal to or less than one per
2 cent of the total bid amount.

3 (c) Adequate public notice of the invitation for bids
4 shall be given a reasonable time before the date set forth in
5 the invitation for the opening of bids. The policy board shall
6 adopt rules [~~which~~] that specify:

7 (1) The form that the notice is to take;

8 (2) What constitutes a reasonable interim between
9 publication and bid opening; and

10 (3) How notice may be published, including publication in
11 a newspaper of general circulation, notice by mail to
12 all persons on any applicable bidders mailing list,
13 publication by any public or private telecommunication
14 information network, or any other method of
15 publication it deems to be effective.

16 (d) Bids shall be opened publicly in the presence of one
17 or more witnesses, at the time and place designated in the
18 invitation for bids[~~-~~]; provided that if the bid is for
19 construction, it shall be opened no sooner than twenty-four
20 hours after the deadline for the submission of the bids. The
21 amount of each bid and other relevant information specified by



1 rule, together with the name of each bidder shall be recorded.

2 The record and each bid shall be open to public inspection.

3 (e) Bids shall be unconditionally accepted without
4 alteration or correction, except as authorized in this chapter
5 or by rules adopted by the policy board.

6 (f) Bids shall be evaluated based on the requirements set
7 forth in the invitation for bids. These requirements may
8 include criteria to determine acceptability such as inspection,
9 testing, quality, workmanship, delivery, and suitability for a
10 particular purpose. Those criteria that will affect the bid
11 price and be considered in evaluation for award shall be as
12 objectively measurable as possible, such as discounts,
13 transportation costs, total or life cycle costs, and the
14 bidder's past performance, if available. The invitation for
15 bids shall set forth the evaluation criteria to be used. No
16 criteria may be used in bid evaluation that are not set forth in
17 the invitation for bids.

18 (g) Correction or withdrawal of inadvertently erroneous
19 bids before or after award, or cancellation of invitations for
20 bids, awards, or contracts based on ~~[such]~~ these bid mistakes,
21 shall be permitted in accordance with rules adopted by the



1 policy board. After bid opening no changes in bid prices or
2 other provisions of bids prejudicial to the interest of the
3 public or to fair competition shall be permitted. Except as
4 otherwise provided by rule, all decisions to permit the
5 correction or withdrawal of bids, or to cancel awards or
6 contracts based on bid mistakes, shall be supported by a written
7 determination made by the chief procurement officer or head of a
8 purchasing agency.

9 (h) The contract shall be awarded with reasonable
10 promptness by written notice to the lowest responsible and
11 responsive bidder whose bid meets the requirements and criteria
12 set forth in the invitation for bids. In the event all bids
13 exceed available funds as certified by the appropriate fiscal
14 officer, the head of the purchasing agency responsible for the
15 procurement in question [~~is authorized~~], in situations where
16 time or economic considerations preclude resolicitation of work
17 of a reduced scope [~~to~~], may negotiate an adjustment of the bid
18 price, including changes in the bid requirements, with the low
19 responsible and responsive bidder, in order to bring the bid
20 within the amount of available funds.



(i) When it is not practicable to initially prepare a purchase description to support an award based on price, an invitation for bids~~[, which]~~ that requests the submission of unpriced offers to be followed by an invitation for bids, which is limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation, may be used. If a multi-step sealed bidding process is used, the notice and the invitation for bids shall describe each step to be used in soliciting, evaluating, and selecting unpriced offers.

(j) For purposes of this section, "immaterial or technical information" includes:

(1) Arithmetical, typographical, and transposition errors; provided that, in the case of error in extension of bid price, unit price shall govern; and

(2) Minor informalities that do not affect price, quantity, quality, delivery, or contractual conditions, such as missing signatures."

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



1 SECTION 4. This Act shall take effect on July 1, 2050, and
2 shall be repealed on July 1, 2024; provided that section
3 103D-302, Hawaii Revised Statutes, shall be reenacted in the
4 form in which it read on the day before the effective date of
5 this Act.



Report Title:

Procurement; Immaterial Errors; Technical Corrections

Description:

Allows bidders for construction contracts to clarify or correct immaterial or technical information required as part of a bid submission for up to 24 hours after the bid submission deadline. Requires that bids for construction be opened no sooner than 24 hours after the deadline for the submission of bids. Defines "immaterial or technical information". Effective 7/1/2050. Repeals 7/1/2024. (SD2)

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