
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



1 include instances where a bidder failed to list a required
2 subcontractor or when a listed subcontractor did not possess the
3 appropriate license and was not qualified to perform the work.

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

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



1 time for prime contractors to correct their subcontractor
2 listings would facilitate the legislature's intent of ensuring
3 that subcontractors are listed properly on the bid submittal and
4 are licensed, while maintaining the integrity of the bid
5 process.

6 The purpose of this Act is to minimize bid challenges,
7 costs, and delays of public works construction projects for five
8 years by:

- 9 (1) Allowing a bidder of a public works construction
10 project to clarify and correct immaterial or technical
11 issues with subcontractor listings for up to twenty-
12 four hours after the bid submission deadline, which
13 shall be complementary and in addition to the time
14 allowed by the procurement policy board to correct or
15 withdraw inadvertently erroneous bids;
- 16 (2) Requiring that bids for construction be publicly
17 opened no sooner than twenty-four hours after the bid
18 submission deadline; and
- 19 (3) Defining "immaterial or technical information".

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



1 "**§103D-302 Competitive sealed bidding.** (a) Contracts
2 shall be awarded by competitive sealed bidding except as
3 otherwise provided in section 103D-301. Awards of contracts by
4 competitive sealed bidding may be made after single or multi-
5 step bidding. Competitive sealed bidding does not include
6 negotiations with bidders after the receipt and opening of bids.
7 Award is based on the criteria set forth in the invitation for
8 bids.

9 (b) An invitation for bids shall be issued, and shall
10 include a purchase description and all contractual terms and
11 conditions applicable to the procurement. If the invitation for
12 bids is for construction, it shall [specify]:

13 (1) Specify that all bids include the name of each person
14 or firm to be engaged by the bidder as a joint
15 contractor or subcontractor in the performance of the
16 contract and the nature and scope of the work to be
17 performed by each[-]; and

18 (2) Allow the bidder to clarify or correct immaterial or
19 technical information required by paragraph (1) for up
20 to twenty-four hours after the bid submission
21 deadline; provided that any additions or substitutions



1 of listed joint subcontractors shall be prohibited,
2 including changes to the nature and scope of work as
3 listed; provided further that the twenty-four hour
4 period shall be complementary and in addition to the
5 time for correction or withdrawal of inadvertently
6 erroneous bids before or after award, as permitted in
7 accordance with rules adopted by the policy board
8 pursuant to subsection (g).

9 This paragraph does not abrogate or modify, and
10 shall not be construed or deemed to abrogate or
11 modify, the authority of the regulated industries
12 complaints office of the department of commerce and
13 consumer affairs and contractors license board to
14 enforce chapter 444.

15 Construction bids that do not comply with this requirement may
16 be accepted if acceptance is in the best interest of the State
17 and the value of the work to be performed by the joint
18 contractor or subcontractor is equal to or less than one per
19 cent of the total bid amount.

20 (c) Adequate public notice of the invitation for bids
21 shall be given a reasonable time before the date set forth in



1 the invitation for the opening of bids. The policy board shall
2 adopt rules [~~which~~] that specify:

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

4 (2) What constitutes a reasonable interim between
5 publication and bid opening; and

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

12 (d) Bids shall be opened publicly in the presence of one
13 or more witnesses, at the time and place designated in the
14 invitation for bids[-]; provided that if the bid is for
15 construction, it shall be opened no sooner than twenty-four
16 hours after the deadline for the submission of the bids. The
17 amount of each bid and other relevant information specified by
18 rule, together with the name of each bidder shall be recorded.
19 The record and each bid shall be open to public inspection.



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

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

16 (g) Correction or withdrawal of inadvertently erroneous
17 bids before or after award, or cancellation of invitations for
18 bids, awards, or contracts based on such bid mistakes, shall be
19 permitted in accordance with rules adopted by the policy board.
20 After bid opening no changes in bid prices or other provisions
21 of bids prejudicial to the interest of the public or to fair



1 competition shall be permitted. Except as otherwise provided by
2 rule, all decisions to permit the correction or withdrawal of
3 bids, or to cancel awards or contracts based on bid mistakes,
4 shall be supported by a written determination made by the chief
5 procurement officer or head of a purchasing agency.

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

18 (i) When it is not practicable to initially prepare a
19 purchase description to support an award based on price, an
20 invitation for bids, which requests the submission of unpriced
21 offers to be followed by an invitation for bids limited to those



1 bidders whose offers have been qualified under the criteria set
2 forth in the first solicitation, may be used. If a multi-step
3 sealed bidding process is used, the notice and the invitation
4 for bids shall describe each step to be used in soliciting,
5 evaluating, and selecting unpriced offers.

6 (j) For purposes of this section, "immaterial or technical
7 information" means:

8 (1) An irregularity or abnormality that, as a matter of
9 form, does not affect substance; or

10 (2) An inconsequential variation that has no, little, or
11 trivial effect on the procurement process and is not
12 prejudicial to other vendors.

13 "Immaterial or technical information" includes a missing
14 signature; typographical errors; an error resulting from an
15 inaccuracy or omission; and a listed subcontractor whose license
16 at bid time had been suspended or forfeited due solely to a
17 ministerial act, pursuant to chapter 444; provided that by the
18 time of the award, the subcontractor's license has been
19 reinstated."

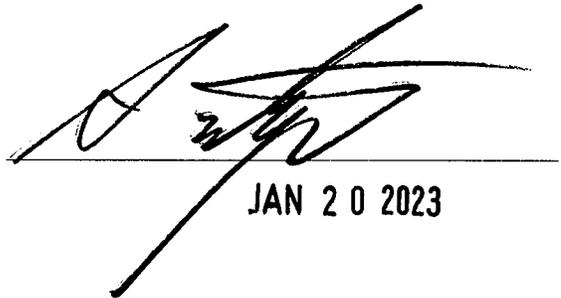
20 SECTION 3. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 4. This Act shall take effect on July 1, 2023;
2 provided that on June 30, 2028, this Act shall be repealed and
3 section 103D-302, Hawaii Revised Statutes, shall be reenacted in
4 the form in which it read on the day before the effective date
5 of this Act.

6

INTRODUCED BY:



JAN 20 2023



H.B. NO. 542

Report Title:

Procurement; Bid Submissions; Immaterial Errors; Technical Corrections; Immaterial or Technical Information

Description:

Allows bidders to clarify or correct immaterial or technical information required as part of a bid submission for up to twenty-four hours after the bid submission deadline, in addition to the time for correction or withdrawal of inadvertently erroneous bids before or after the award as permitted by rules adopted by the procurement policy board. Requires that bids for construction be opened no sooner than twenty-four hours after the deadline for the submission of bids. Defines "immaterial or technical information". Repeals 6/30/2028.

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

