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## HOUSE CONCURRENT RESOLUTION

REQUESTING THE CONVENING OF A TASK FORCE TO DETERMINE THE PROPER INTERPRETATION AND APPLICATION OF THE TERM "INCIDENTAL AND SUPPLEMENTAL" WITH REGARD TO THE CONTRACTING BUSINESS.

1           WHEREAS, the Contractors License Board is vested with broad  
2 authority to issue licenses to contractors and to ensure that  
3 contractors are qualified to undertake the work for which they  
4 are licensed; and

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6           WHEREAS, the Contractors License Board classifies the types  
7 of licenses it issues as:

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9           (1) General engineering contractor;  
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11           (2) General building contractor; and  
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13           (3) Specialty contractor; and

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15           WHEREAS, the Hawaii Supreme Court in *Okada Trucking Co.,*  
16 *Ltd. v. Board of Water Supply, City and County of Honolulu and*  
17 *Inter Island Environmental Services, Inc.*, 97 Hawai'i 450 (2002),  
18 made several significant holdings that clarified the treatment  
19 of bid proposals submitted by contractors on state and county  
20 projects; and

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22           WHEREAS, in *Okada*, the Hawaii Supreme Court held that a  
23 general contractor's bid for a board of water supply booster  
24 station project was nonresponsive because it required work by a  
25 licensed plumbing (specialty) contractor, which was work that  
26 the general contractor was not authorized to perform under the  
27 general contracting licenses that it held; and

28  
29           WHEREAS, in *Okada*, the Hawaii Supreme Court also held that  
30 a general engineering or building contractor is prohibited from  
31 undertaking any work, solely or as part of a larger project,



1 that would require it to act as a specialty contractor in an  
2 area in which the general contractor was not licensed to  
3 operate; and  
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5 WHEREAS, in *Okada*, the Hawaii Supreme Court noted that a  
6 specialty contractor, as opposed to a general contractor, is  
7 permitted to undertake work involving the use of crafts or  
8 trades for which the specialty contractor is not licensed, so  
9 long as the performance of the work in those crafts or trades is  
10 "incidental and supplemental" to the performance of work in the  
11 craft for which the specialty contractor is licensed; and  
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13 WHEREAS, the term "incidental and supplemental" is defined  
14 as work in other trades directly related to and necessary for  
15 the completion of the project undertaken by a licensee pursuant  
16 to the scope of the licensee's license; and  
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18 WHEREAS, in the years since the *Okada* opinion, the  
19 Contractors License Board has permitted contractors, on several  
20 occasions, to submit bid proposals that failed to identify  
21 specialty subcontractors that would be engaged, even in  
22 situations where the invitation for bids clearly indicated that  
23 the construction projects involved would require substantial  
24 amounts of specialty contracting work; and  
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26 WHEREAS, in these cases, the Contractors License Board has  
27 ruled that the specialty contracting work required in these  
28 projects was merely "incidental and supplemental" to the  
29 licenses held by the bidding contractors; and  
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31 WHEREAS, the Contractors License Board's application of the  
32 term "incidental and supplemental" appears to contradict the  
33 Hawaii Supreme Court's holdings in *Okada*; now, therefore,  
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35 BE IT RESOLVED by the House of Representatives of the  
36 Twenty-fifth Legislature of the State of Hawaii, Regular Session  
37 of 2009, the Senate concurring, that the Department of Commerce  
38 and Consumer Affairs is requested to convene a task force for  
39 the purpose of determining how the term "incidental and  
40 supplemental" should be interpreted and applied in the bidding  
41 process; and  
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43 BE IT FURTHER RESOLVED that the Legislature requests that  
44 the task force consist of seven members designated as follows:



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- 2 (1) Three members appointed by the Governor;
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- 4 (2) Two members appointed by the President of the Senate;
- 5 and
- 6
- 7 (3) Two members appointed by the Speaker of the House of
- 8 Representatives; and
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10 BE IT FURTHER RESOLVED that the members of the task force  
11 are requested to select a chairperson from among themselves; and  
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13 BE IT FURTHER RESOLVED that the Department of Commerce and  
14 Consumer Affairs is requested to report the findings and  
15 recommendations of the task force, including any proposed  
16 legislation, to the Legislature not later than twenty days prior  
17 to the convening of the Regular Session of 2010; and  
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19 BE IT FURTHER RESOLVED that certified copies of this  
20 Concurrent Resolution be transmitted to the Governor, the  
21 Director of Commerce and Consumer Affairs, the President of the  
22 Senate, the Speaker of the House of Representatives, and the  
23 Chairperson of the Contractors License Board.  
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OFFERED BY:           *Kal Rood*          

**MAR 13 2009**