
HOUSE CONCURRENT RESOLUTION

REQUESTING A STUDY TO DETERMINE THE PROPER INTERPRETATION AND
APPLICATION OF THE PHRASE "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;

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15 and

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

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



1 WHEREAS, in *Okada*, the Hawaii Supreme Court also held that
2 a general engineering or building contractor is prohibited from
3 undertaking any work, solely or as part of a larger project,
4 that would require it to act as a specialty contractor in an
5 area in which the general contractor was not licensed to
6 operate; and
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8 WHEREAS, in *Okada*, the Hawaii Supreme Court noted that a
9 specialty contractor, as opposed to a general contractor, is
10 permitted to undertake work involving the use of crafts or
11 trades for which the specialty contractor is not licensed, so
12 long as the performance of the work in those crafts or trades is
13 "incidental and supplemental" to the performance of work in the
14 craft for which the specialty contractor is licensed; and
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16 WHEREAS, the phrase "incidental and supplemental" is
17 defined as work in other trades directly related to and
18 necessary for the completion of the project undertaken by a
19 licensee pursuant to the scope of the licensee's license; and
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21 WHEREAS, in the years since the *Okada* opinion, the
22 Contractors License Board has permitted contractors, on several
23 occasions, to submit bid proposals that failed to identify
24 specialty subcontractors that would be engaged, even in
25 situations where the invitation for bids clearly indicated that
26 the construction projects involved would require substantial
27 amounts of specialty contracting work; and
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29 WHEREAS, in these cases, the Contractors License Board has
30 ruled that the specialty contracting work required in these
31 projects was merely "incidental and supplemental" to the
32 licenses held by the bidding contractors; and
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34 WHEREAS, the Contractors License Board's application of the
35 phrase "incidental and supplemental" appears to contradict the
36 Hawaii Supreme Court's holdings in *Okada*; now, therefore,
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38 BE IT RESOLVED by the House of Representatives of the
39 Twenty-fifth Legislature of the State of Hawaii, Regular Session
40 of 2009, the Senate concurring, that the Legislative Reference
41 Bureau is requested to conduct a study on how the phrase
42 "incidental and supplemental" should be interpreted and applied
43 in the bidding process; and



1 BE IT FURTHER RESOLVED that the Legislative Reference
2 Bureau determine the extent of work that can be performed by a
3 specialty contractor when the specialty contractor is not
4 licensed for that work, and consider the interests and
5 protection of consumers in conducting the study; and
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7 BE IT FURTHER RESOLVED that the Legislative Reference
8 Bureau is requested to report its findings and recommendations,
9 including any proposed legislation, to the Legislature no later
10 than 20 days prior to the convening of the Regular Session of
11 2010; and
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13 BE IT FURTHER RESOLVED that certified copies of this
14 Concurrent Resolution be transmitted to the Director of the
15 Legislative Reference Bureau and Chairperson of the Contractors
16 License Board.

