

MAR 18 2009

S.C.R. NO. 162

SENATE 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

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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 Senate of the Twenty-fifth
36 Legislature of the State of Hawaii, Regular Session of 2009, the
37 House of Representatives concurring, that the Department of
38 Commerce and Consumer Affairs is requested to convene a task
39 force for the purpose of determining how the term "incidental
40 and supplemental" should be interpreted and applied in the
41 bidding 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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- (1) Three members appointed by the Governor;
- (2) Two members appointed by the President of the Senate;
and
- (3) Two members appointed by the Speaker of the House of Representatives; and

BE IT FURTHER RESOLVED that the members of the task force are requested to select a chairperson from among themselves; and

BE IT FURTHER RESOLVED that the Department of Commerce and Consumer Affairs is requested to report the findings and recommendations of the task force, including any proposed legislation, to the Legislature not later than twenty days prior to the convening of the Regular Session of 2010; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Governor, the Director of Commerce and Consumer Affairs, the President of the Senate, the Speaker of the House of Representatives, and the Chairperson of the Contractors License Board.

OFFERED BY: 

