
SENATE RESOLUTION

REQUESTING A REPORT OF THE CONTRACTING LICENSING LAWS OF OTHER STATES TO CLARIFY WHAT CONSTITUTES "INCIDENTAL AND SUPPLEMENTAL" WORK IN THE CONTEXT OF CONTRACTOR LICENSING.

1 WHEREAS, the Contractors License Board is vested with broad
2 authority pursuant to section 444-4, Hawaii Revised Statutes, to
3 issue licenses to contractors and to ensure that contractors are
4 qualified to undertake the work for which they are licensed; and
5

6 WHEREAS, pursuant to section 444-7, Hawaii Revised
7 Statutes, the Contractors License Board classifies the types of
8 licenses it issues as:

- 9
- 10 (1) General engineering contractor;
 - 11
 - 12 (2) General building contractor; and
 - 13
 - 14 (3) Specialty contractor; and
 - 15

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

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

30 WHEREAS, in *Okada*, the Hawaii Supreme Court also held that
31 a general engineering or building contractor is prohibited from
32 undertaking any work, solely or as part of a larger project,
33 that would require it to act as a specialty contractor in an
34 area in which the general contractor was not licensed to
35 operate; and



1
2 WHEREAS, in *Okada*, the Hawaii Supreme Court noted that a
3 specialty contractor, as opposed to a general contractor, is
4 permitted to undertake work involving the use of crafts or
5 trades for which the specialty contractor is not licensed, so
6 long as the performance of the work in those crafts or trades is
7 "incidental and supplemental" to the performance of work in the
8 craft for which the specialty contractor is licensed; and
9

10 WHEREAS, pursuant to section 444-8, Hawaii Revised
11 Statutes, a specialty contractor is not prohibited from taking
12 and executing a contract involving the use of two or more crafts
13 or trades, if the performance of such work is in a craft or
14 trade in which the specialty contractor is not licensed,
15 provided that the work is "incidental and supplemental" to the
16 performance of the work in the craft or trade in which the
17 specialty contractor is licensed; and
18

19 WHEREAS, section 444-8, Hawaii Revised Statutes, which
20 allows specialty contractors to undertake "incidental and
21 supplemental work" applies only to specialty contractors and not
22 to general contractors; and
23

24 WHEREAS, the Contractors License Board has applied the term
25 "incidental and supplemental" (defined under section 16-77-34,
26 Hawaii Administrative Rules, as work in other trades directly
27 related to and necessary for the completion of the project
28 undertaken by a licensee pursuant to the scope of the licensee's
29 license) to general engineering contractors and to general
30 building contractors who can perform incidental and supplemental
31 work under the rule; and
32

33 WHEREAS, current Hawaii statutory law in chapter 444,
34 Hawaii Revised Statutes, is silent on whether a general
35 contractor can perform incidental and supplemental work under
36 its general contractor license; and
37

38 WHEREAS, in the years since the *Okada* opinion, the
39 Contractors License Board has permitted contractors, on several
40 occasions, to submit bids that failed to identify specialty
41 subcontractors that would be engaged, even in situations where
42 the invitation for bids clearly indicated that the construction
43 projects involved would require substantial amounts of specialty
44 contracting work; and



1
2 WHEREAS, in these cases, the Contractors License Board has
3 ruled that the specialty contracting work required in these
4 projects was merely "incidental and supplemental" to the
5 licenses held by the bidding contractors; and
6

7 BE IT RESOLVED by the Senate of the Twenty-fifth
8 Legislature of the State of Hawaii, Regular Session of 2010,
9 that the Legislative Reference Bureau is requested to submit a
10 report on how other states' contractor licensing laws define and
11 address "incidental and supplemental" work; and
12

13 BE IT FURTHER RESOLVED that the report provide information
14 that will help the Legislature determine the extent to which the
15 "incidental and supplemental" language in chapter 444, Hawaii
16 Revised Statutes, should allow specialty contracting work to be
17 performed by a contractor who is not licensed to perform that
18 work; and
19

20 BE IT FURTHER RESOLVED that as part of the foregoing task,
21 the Legislative Reference Bureau consider the interests and
22 protection of consumers; and
23

24 BE IT FURTHER RESOLVED that the Legislative Reference
25 Bureau is requested to report its findings and recommendations,
26 including any proposed legislation, to the Legislature no later
27 than twenty days prior to the convening of the Regular Session
28 of 2011; and
29

30 BE IT FURTHER RESOLVED that certified copies of this
31 Resolution be transmitted to the Director of the Legislative
32 Reference Bureau and Chairperson of the Contractors License
33 Board.

