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# HOUSE CONCURRENT RESOLUTION

REQUESTING THE COMPTROLLER TO ESTABLISH A TASK FORCE TO STUDY  
THE STATE PROCUREMENT CODE AND IDENTIFY AMENDMENTS THAT  
WOULD INCREASE THE ECONOMY, EFFICIENCY, EFFECTIVENESS, AND  
IMPARTIALITY IN THE PROCUREMENT OF PUBLIC WORKS  
CONSTRUCTION PROJECTS.

1           WHEREAS, chapter 103D, Hawaii Revised Statutes, governs the  
2 procurement of goods, services, or construction by state and  
3 county agencies; and

4  
5           WHEREAS, pursuant to chapters 103D and 103F, Hawaii Revised  
6 Statutes, the mission of the State Procurement Office is to  
7 promote economy, efficiency, effectiveness, and impartiality in  
8 procurement for state and county governments through  
9 development, implementation, and maintenance of policies and  
10 procedures that provide for broad-based competition,  
11 accessibility to government contracts, and fiscal integrity in  
12 an open, fair, and transparent procurement process; and

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14           WHEREAS, the State Procurement Office adopts rules to  
15 implement the procurement law for all state and county agencies;  
16 provides coordination, review, analysis, implementation, and  
17 oversight services for various procurement projects; and  
18 provides training to ensure compliance with procurement laws;  
19 and

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21           WHEREAS, chapter 103D, Hawaii Revised Statutes, was based  
22 on the framework provided by the American Bar Association's  
23 Model Procurement Code for State and Local Governments and was  
24 enacted to increase competition, ensure fairness, and establish  
25 greater uniformity in the public procurement of goods and  
26 services; and

27  
28           WHEREAS, the state procurement code has been amended more  
29 than forty times since its enactment in 1993, and the numerous



1 statutory changes have resulted in increased complexity in the  
2 procurement process; and

3  
4 WHEREAS, in an effort to promote economy, efficiency, and  
5 fairness in public procurement, it is important to identify  
6 factors that may cause delays in the procurement process,  
7 including unnecessary bid preferences, bid protests, and  
8 increased contract prices for publicly funded infrastructure and  
9 construction projects; and

10  
11 WHEREAS, the Hawaii Supreme Court's decision in *Okada*  
12 *Trucking Co., Ltd. v. Board of Water Supply*, 97 Haw. 450 (2002),  
13 is widely interpreted to mean that general engineering  
14 contractors and general building contractors are prohibited from  
15 undertaking any work, solely or as a part of a larger project,  
16 that would require the general contractor to act as a specialty  
17 contractor in any area where the general contractor has no  
18 license; and

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20 WHEREAS, section 103D-302, Hawaii Revised Statutes,  
21 requires that all subcontractors to be used on a public works  
22 project be listed on the bid proposal submitted to any state  
23 agency in response to a bid request; and

24  
25 WHEREAS, the State currently recognizes over ninety-eight  
26 different specialty contractor licenses that a bidder must  
27 review to determine whether a particular subcontractor specialty  
28 must be listed on a bid; and

29  
30 WHEREAS, the federal government does not require the  
31 listing of subcontractors on any bid proposal and does not  
32 require a contractor's license to bid; rather, it relies on  
33 bonding and qualification of the prime contractor in awarding  
34 bids; and

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36 WHEREAS, many recent bid protests have been based solely on  
37 subcontractor listing and licensing issues, resulting in major  
38 delays and cost increases on public works construction projects;  
39 and

40  
41 WHEREAS, since the *Okada* decision, the number of bid  
42 protests based solely on a subcontractor listing have increased  
43 significantly, costing state taxpayers over \$1,000,000; and  
44



1 WHEREAS, Act 173, Session Laws of Hawaii 2012, requires the  
2 State Procurement Office to maintain statistics on solicitations  
3 and awards protested under section 103D-701, Hawaii Revised  
4 Statutes, for the purpose of improving procurement procedures;  
5 and

6  
7 WHEREAS, it is important to continue to gather bid protest  
8 data and to study past bid protest outcomes to further determine  
9 where costs have increased due to bid protests in public works  
10 construction projects; now, therefore,

11  
12 BE IT RESOLVED by the House of Representatives of the  
13 Twenty-seventh Legislature of the State of Hawaii, Regular  
14 Session of 2013, the Senate concurring, that the Comptroller is  
15 requested to establish a task force to determine the impact of  
16 the *Okada Trucking Co., Ltd. v. Board of Water Supply*, 97 Haw.  
17 450 (2002), decision on bid protests and the cost impacts that  
18 bid protests have had for public works construction projects;  
19 and

20  
21 BE IT FURTHER RESOLVED that the Comptroller, or the  
22 Comptroller's designee, is requested to serve as chair of the  
23 task force; and

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25 BE IT FURTHER RESOLVED that the Comptroller is requested to  
26 solicit representatives from the following entities to serve on  
27 the task force, provided that those persons designated shall be  
28 knowledgeable of procurement procedures and issues within their  
29 respective organizations:

- 30  
31 (1) The State Procurement Office;  
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33 (2) The University of Hawaii;  
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35 (3) The Department of Education;  
36  
37 (4) The Office of Hawaiian Affairs;  
38  
39 (5) The Department of Transportation;  
40  
41 (6) A county procurement department;  
42  
43 (7) A county board or department of water supply;  
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1 (8) The semi-autonomous public transit agency of the City  
2 and County of Honolulu;

3  
4 (9) The Subcontractors Association of Hawaii;

5  
6 (10) The Building Industry Association; and

7  
8 (11) The General Contractors Association of Hawaii; and  
9

10 BE IT FURTHER RESOLVED that the task force is requested to:

11  
12 (1) Identify ways in which the state procurement code may  
13 increase the economy, efficiency, effectiveness, and  
14 impartiality in the procurement of public works  
15 construction projects;

16  
17 (2) Propose amendments to the state procurement code that  
18 may increase efficiency and mitigate causes for bid  
19 protests in public works construction projects; and  
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21 (3) Determine whether administrative rules governing  
22 contractors reflect the intent of the Legislature and  
23 chapter 103D, Hawaii Revised Statutes, particularly as  
24 to the scope of work for the three contractor  
25 classifications, in order to eliminate construction  
26 trade disputes and diminish the number of bid  
27 protests; and  
28

29 BE IT FURTHER RESOLVED that members of the task force are  
30 requested to serve without compensation, but may be reimbursed  
31 for expenses, including travel expenses, necessary for the  
32 performance of their duties; and  
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34 BE IT FURTHER RESOLVED that the task force is requested to  
35 submit its findings and recommendations, including any proposed  
36 legislation, to the Legislature no later than twenty days prior  
37 to the convening of the Regular Session of 2015; and  
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39 BE IT FURTHER RESOLVED that the Legislative Reference  
40 Bureau is requested to assist the task force in drafting  
41 proposed legislation; provided that the task force submits its  
42 request for proposed legislation, if any, to the Legislative  
43 Reference Bureau no later than November 1, 2014; and  
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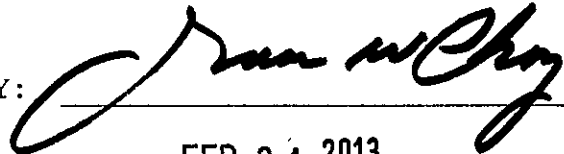


# H.C.R. NO. 51

1 BE IT FURTHER RESOLVED that the task force shall be  
2 dissolved on June 30, 2015; and  
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4 BE IT FURTHER RESOLVED that certified copies of this  
5 Concurrent Resolution be transmitted to the Governor, President  
6 of the Senate, Speaker of the House of Representatives, Attorney  
7 General, Comptroller, Chief Procurement Officer, Director of  
8 Transportation, Superintendent of Education, Administrator of  
9 the Office of Hawaiian Affairs, President of the University of  
10 Hawaii System, Director of the Legislative Reference Bureau, the  
11 Mayor of each county, the board or department of water supply of  
12 each county, Executive Director of the Subcontractors  
13 Association of Hawaii, Executive Director of the Building  
14 Industry Association - Hawaii Chapter, and the Executive  
15 Director of the General Contractors Association of Hawaii.  
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OFFERED BY: \_\_\_\_\_



FEB 21 2013

