

---

---

## HOUSE 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

13  
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

20  
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  
30 statutory changes have resulted in increased complexity in the  
31 procurement process; and

32



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

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

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

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

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

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

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

42           WHEREAS, Act 173, Session Laws of Hawaii 2012, requires the  
43 State Procurement Office to maintain statistics on solicitations  
44 and awards protested under section 103D-701, Hawaii Revised



1 Statutes, for the purpose of improving procurement procedures;  
2 and  
3

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

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

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

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

- 27 (1) The State Procurement Office;
- 28
- 29 (2) The University of Hawaii;
- 30
- 31 (3) The Department of Education;
- 32
- 33 (4) The Office of Hawaiian Affairs;
- 34
- 35 (5) The Department of Transportation;
- 36
- 37 (6) A county procurement department;
- 38
- 39 (7) A county board or department of water supply;
- 40
- 41 (8) The semi-autonomous public transit agency of the City  
42 and County of Honolulu;
- 43
- 44 (9) The Subcontractors Association of Hawaii;



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43

(10) The Building Industry Association; and

(11) The General Contractors Association of Hawaii; and

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

- (1) Identify ways in which the state procurement code may increase the economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects;
- (2) Propose amendments to the state procurement code that may increase efficiency and mitigate causes for bid protests in public works construction projects; and
- (3) Determine whether administrative rules governing contractors reflect the intent of the Legislature and chapter 103D, Hawaii Revised Statutes, particularly as to the scope of work for the three contractor classifications, in order to eliminate construction trade disputes and diminish the number of bid protests; and

BE IT FURTHER RESOLVED that members of the task force are requested to serve without compensation, but may be reimbursed for expenses, including travel expenses, necessary for the performance of their duties; and

BE IT FURTHER RESOLVED that the task force is requested to submit its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2015; and

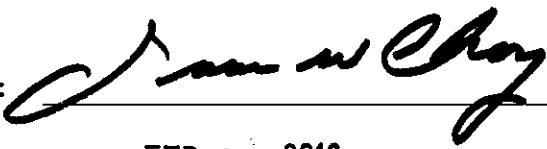
BE IT FURTHER RESOLVED that the Legislative Reference Bureau is requested to assist the task force in drafting proposed legislation; provided that the task force submits its request for proposed legislation, if any, to the Legislative Reference Bureau no later than November 1, 2014; and

BE IT FURTHER RESOLVED that the task force shall be dissolved on June 30, 2015; and



1 BE IT FURTHER RESOLVED that certified copies of this  
2 Resolution be transmitted to the Governor, President of the  
3 Senate, Speaker of the House of Representatives, Attorney  
4 General, Comptroller, Chief Procurement Officer, Director of  
5 Transportation, Superintendent of Education, Administrator of  
6 the Office of Hawaiian Affairs, President of the University of  
7 Hawaii System, Director of the Legislative Reference Bureau, the  
8 Mayor of each county, the board or department of water supply of  
9 each county, Executive Director of the Subcontractors  
10 Association of Hawaii, Executive Director of the Building  
11 Industry Association - Hawaii Chapter, and the Executive  
12 Director of the General Contractors Association of Hawaii.

13  
14  
15

OFFERED BY: 

FEB 21 2013

