

MAR 11 2013

SENATE 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

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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

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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

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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
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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
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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
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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
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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
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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
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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
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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
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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,
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9 BE IT RESOLVED by the Senate of the Twenty-seventh
10 Legislature of the State of Hawaii, Regular Session of 2013,
11 that the Comptroller is requested to establish a task force to
12 determine the impact of the *Okada Trucking Co., Ltd. v. Board of*
13 *Water Supply*, 97 Haw. 450 (2002), decision on bid protests and
14 the cost impacts that bid protests have had for public works
15 construction projects; and
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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
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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:
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- 27 (1) The State Procurement Office;
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- 29 (2) The University of Hawaii;
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- 31 (3) The Department of Education;
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- 33 (4) The Office of Hawaiian Affairs;
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- 35 (5) The Department of Transportation;
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- 37 (6) A county procurement department;
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- 39 (7) A county board or department of water supply;
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- 41 (8) The semi-autonomous public transit agency of the City
42 and County of Honolulu;
- 43
- 44 (9) The Subcontractors Association of Hawaii;



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2 (10) The Building Industry Association; and

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4 (11) The General Contractors Association of Hawaii; and

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

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8 (1) Identify ways in which the state procurement code may
9 increase the economy, efficiency, effectiveness, and
10 impartiality in the procurement of public works
11 construction projects;

12
13 (2) Propose amendments to the state procurement code that
14 may increase efficiency and mitigate causes for bid
15 protests in public works construction projects; and

16
17 (3) Determine whether administrative rules governing
18 contractors reflect the intent of the Legislature and
19 chapter 103D, Hawaii Revised Statutes, particularly as
20 to the scope of work for the three contractor
21 classifications, in order to eliminate construction
22 trade disputes and diminish the number of bid
23 protests; and

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

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

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

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41 BE IT FURTHER RESOLVED that the task force shall be
42 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.

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