

JAN 17 2014

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# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the execution and  
2 delivery of public works projects are often delayed due to bid  
3 protests by non-lowest bidders challenging technical mistakes in  
4 the lowest bidder's proposal. As a result of bid protests,  
5 projects are delayed, funding lapses, and inflation increases  
6 final project costs.

7           The legislature further finds that many recent bid protests  
8 have been based solely on subcontractor listing and licensing  
9 issues, causing major delays and cost increases for public works  
10 construction projects. Specifically, section 103D-302, Hawaii  
11 Revised Statutes, requires that all subcontractors or joint  
12 contractors to be used on a public works project be listed on  
13 the bid proposal submitted to any state or county agency subject  
14 to the procurement code. As a result, numerous protests allege  
15 that the bidder failed to list a required subcontractor or that  
16 the listed subcontractor did not possess the appropriate license  
17 and was not qualified to perform the work. In fiscal year 2013  
18 alone, the department of accounting and general services



1 estimated that the State paid over \$2,600,000 extra for public  
2 works projects due to problems with subcontractor listings.

3 The legislature further finds that time constraints between  
4 the time a bidder receives all subcontractor bids and the bid  
5 submission deadline can cause inadvertent failure to list a  
6 required subcontractor or listing of an improperly licensed  
7 subcontractor in a bid, resulting in a bid protest. Often, due  
8 to the complexity of the laws regarding contractor licenses  
9 under chapter 444, Hawaii Revised Statutes; title 16, Hawaii  
10 Administrative Rules; and judicial, quasi-judicial, and agency  
11 interpretations of these laws and rules, bidders and  
12 subcontractors sometimes misunderstand the licensing  
13 requirements. The contractors license board currently  
14 recognizes over ninety-eight different specialty contractor  
15 licenses that a prime bidder must sort through to determine the  
16 appropriate subcontractor specialty to be listed on a bid.

17 In comparison, the federal government does not require the  
18 listing of subcontractors on any bid proposal. In fact, the  
19 federal government does not require a contractor's license to  
20 bid on or perform construction work.

21 The legislature further recognizes that the 2000 American  
22 Bar Association's Model Procurement Code, the model for Hawaii's



1 procurement code, does not include such a subcontractor listing  
2 requirement.

3 The purpose of this Act is to eliminate the subcontractor  
4 listing requirement in the competitive sealed bidding process  
5 for public works construction projects.

6 SECTION 2. Section 103D-302, Hawaii Revised Statutes, is  
7 amended by amending subsection (b) to read as follows:

8 "(b) An invitation for bids shall be issued, and shall  
9 include a purchase description and all contractual terms and  
10 conditions applicable to the procurement. [~~If the invitation  
11 for bids is for construction, it shall specify that all bids  
12 include the name of each person or firm to be engaged by the  
13 bidder as a joint contractor or subcontractor in the performance  
14 of the contract and the nature and scope of the work to be  
15 performed by each. Construction bids that do not comply with  
16 this requirement may be accepted if acceptance is in the best  
17 interest of the State and the value of the work to be performed  
18 by the joint contractor or subcontractor is equal to or less  
19 than one per cent of the total bid amount.]"~~

20 SECTION 3. Statutory material to be repealed is bracketed  
21 and stricken.



1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Ronald H. Bell

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# S.B. NO. 2469

**Report Title:**

Competitive Sealed Bidding; Subcontractors

**Description:**

Eliminates the requirement that construction bids for public works projects, submitted under the competitive sealed bidding process, list potential joint contractors and subcontractors.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

