

JAN 27 2016

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 Hawaii public
2 procurement code requires bid proposals to include the name and
3 scope of work of subcontractors or joint contractors that will
4 be used on a public works project. Time constraints between the
5 time a bidder receives all subcontractor bids and the bid
6 submission deadline as well as the complexity of licensing
7 requirements can cause inadvertent failure to list a required
8 subcontractor or listing of an improperly licensed subcontractor
9 in a bid, resulting in a bid challenge. The execution and
10 delivery of public works projects are often delayed due to
11 bidders challenging technical mistakes in the lowest bidder's
12 proposal. Many recent bid challenges have been based on the
13 failure to list a required subcontractor or licensing scope of
14 work issues. As a result of bid challenges, projects are
15 delayed, funding lapses, and inflation increases final project
16 costs.



S.B. NO. 3093

1 The legislature further finds that the contractors license
2 board recognizes over one hundred different specialty contractor
3 licenses that a prime bidder must sort through to determine the
4 appropriate subcontractor specialty to be listed on a bid. The
5 department of accounting and general services has estimated that
6 since 2005, the State has paid an extra \$11,000,000 for public
7 works projects due to issues associated with the subcontractor
8 listing requirement.

9 The legislature additionally finds that in comparison, the
10 federal government does not require the listing of
11 subcontractors on any bid proposal; and the 2000 American Bar
12 Association's Model Procurement Code, the model for Hawaii's
13 procurement code, does not include a subcontractor listing
14 requirement. Twenty states and the federal government do not
15 even require a general contractor's license to bid on or perform
16 construction work. While subcontractor listing proponents cite
17 legislative intent and the deterrent of bid shopping and bid
18 peddling in support of the listing requirement, it is evident
19 from the number of awards to non-low bidders and increased costs
20 of construction due to the subcontractor listing discrepancies
21 that the listing requirement is being used beyond its



1 legislative intent. Providing prime contractors with additional
2 time to submit a subcontractor list would ensure that
3 subcontractors are listed properly and are licensed and
4 qualified in the scope and nature of the work on the bid
5 submittal.

6 The purpose of this Act is to minimize bid challenges,
7 costs, and delays of projects by providing a bidder of a public
8 works construction project with two working days after the
9 closing of a bid to provide the name of each person or firm to
10 be engaged by the bidder as a joint contractor or subcontractor
11 in performance of the contract and the nature and scope of the
12 work to be performed by each joint contractor or subcontractor.

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

15 "(b) An invitation for bids shall be issued, and shall
16 include a purchase description and all contractual terms and
17 conditions applicable to the procurement. If the invitation for
18 bids is for construction, it shall specify that all bids include
19 the name of each person or firm to be engaged by the bidder as a
20 joint contractor or subcontractor in the performance of the
21 contract and the nature and scope of the work to be performed by



S.B. NO. 3093

1 each[-]; provided that the bidder shall have two working days
 2 after the closing of bids to provide the name of each person or
 3 firm to be engaged by the bidder as a joint contractor or
 4 subcontractor in the performance of the contract and the nature
 5 and scope of the work to be performed by each; provided further
 6 that the bids shall be opened pursuant to subsection (d) only
 7 after the close of the two-day period. Construction bids that
 8 do not comply with [~~this requirement~~] these requirements may be
 9 accepted if acceptance is in the best interest of the State and
 10 the value of the work to be performed by the joint contractor or
 11 subcontractor is equal to or less than one per cent of the total
 12 bid amount."

13 SECTION 3. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: Anna Mercado

Francisco
St. Rivers
Breene Hunt
Will Lyvo



S.B. NO. 3093

Report Title:

Procurement; Competitive Sealed Bidding; Public Works
Construction Project; Joint Contractor; Subcontractor

Description:

Provides a bidder of a public works construction project with two working days after the closing of bids to provide the name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor and the nature and scope of the work to be performed by each joint contractor or subcontractor.

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