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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 unscrupulous  
2 practices of bid shopping and bid peddling still plague Hawaii's  
3 construction industry. The state of Washington prohibits bid  
4 shopping and bid peddling and affords subcontractors affected by  
5 those practices a legal means of redress. To further curb  
6 undesirable bid shopping and bid peddling practices in public  
7 works, the purpose of this Act is to incorporate the Washington  
8 state model into Hawaii law.

9           SECTION 2. Section 103D-302, Hawaii Revised Statutes, is  
10 amended to read as follows:

11           "§103D-302 Competitive sealed bidding. (a) Contracts  
12 shall be awarded by competitive sealed bidding except as  
13 otherwise provided in section 103D-301. Awards of contracts by  
14 competitive sealed bidding may be made after single or multi-  
15 step bidding. Competitive sealed bidding does not include  
16 negotiations with bidders after the receipt and opening of bids.



1 Award is based on the criteria set forth in the invitation for  
2 bids.

3 (b) An invitation for bids shall be issued, and shall  
4 include a purchase description and all contractual terms and  
5 conditions applicable to the procurement. If the invitation for  
6 bids is for construction, it shall specify that all bids include  
7 the name of each person or firm to be engaged by the bidder as a  
8 joint contractor or subcontractor in the performance of the  
9 contract and the nature and scope of the work to be performed by  
10 each. Construction bids that do not comply with this  
11 requirement may be accepted if acceptance is in the best  
12 interest of the State and the value of the work to be performed  
13 by the joint contractor or subcontractor is equal to or less  
14 than one per cent of the total bid amount. The bidder shall not  
15 list more than one subcontractor for each scope of work  
16 identified, unless subcontractors vary with bid alternates, in  
17 which case the bidder shall indicate which subcontractor will be  
18 used for which alternate.

19 (c) Adequate public notice of the invitation for bids  
20 shall be given a reasonable time before the date set forth in  
21 the invitation for the opening of bids. The policy board shall  
22 adopt rules which specify:



- 1 (1) The form that the notice is to take;
- 2 (2) What constitutes a reasonable interim between  
3 publication and bid opening; and
- 4 (3) How notice may be published, including publication in  
5 a newspaper of general circulation, notice by mail to  
6 all persons on any applicable bidders mailing list,  
7 publication by any public or private telecommunication  
8 information network, or any other method of  
9 publication it deems to be effective.
- 10 (d) Bids shall be opened publicly in the presence of one  
11 or more witnesses, at the time and place designated in the  
12 invitation for bids. The amount of each bid and other relevant  
13 information specified by rule, together with the name of each  
14 bidder shall be recorded. The record and each bid shall be open  
15 to public inspection.
- 16 (e) Bids shall be unconditionally accepted without  
17 alteration or correction, except as authorized in this chapter  
18 or by rules adopted by the policy board.
- 19 (f) Bids shall be evaluated based on the requirements set  
20 forth in the invitation for bids. These requirements may  
21 include criteria to determine acceptability such as inspection,  
22 testing, quality, workmanship, delivery, and suitability for a



1 particular purpose. Those criteria that will affect the bid  
2 price and be considered in evaluation for award shall be  
3 objectively measurable, such as discounts, transportation costs,  
4 and total or life cycle costs. The invitation for bids shall  
5 set forth the evaluation criteria to be used. No criteria may  
6 be used in bid evaluation that are not set forth in the  
7 invitation for bids.

8 (g) Correction or withdrawal of inadvertently erroneous  
9 bids before or after award, or cancellation of invitations for  
10 bids, awards, or contracts based on such bid mistakes, shall be  
11 permitted in accordance with rules adopted by the policy board.  
12 After bid opening no changes in bid prices or other provisions  
13 of bids prejudicial to the interest of the public or to fair  
14 competition shall be permitted. Except as otherwise provided by  
15 rule, all decisions to permit the correction or withdrawal of  
16 bids, or to cancel awards or contracts based on bid mistakes,  
17 shall be supported by a written determination made by the chief  
18 procurement officer or head of a purchasing agency.

19 (h) The substitution of a listed subcontractor in  
20 furtherance of bid shopping or bid peddling before or after the  
21 award of the prime contract shall be prohibited, and the  
22 originally listed subcontractor may recover monetary damages



1 from the bidder who executed a contract with the purchasing  
2 agency and the substituted subcontractor, but not from the  
3 purchasing agency inviting the bid. It is the bidder or  
4 substituted subcontractor's burden to prove by a preponderance  
5 of the evidence that bid shopping or bid peddling did not occur.  
6 Substitution of a listed subcontractor may be made by the bidder  
7 for the following reasons:

8       (1) Refusal of the listed subcontractor to sign a contract  
9           with the bidder;

10       (2) Bankruptcy or insolvency of the listed subcontractor;

11       (3) Inability of the listed subcontractor to perform the  
12           requirements of the proposed contract or the project;

13       (4) Inability of the listed subcontractor to retain the  
14           necessary license, bonding, insurance, or other  
15           statutory requirements to perform the work detailed in  
16           the contract;

17       (5) The listed subcontractor is barred from participating  
18           in the project as a result of a court order or summary  
19           judgment, including debarment from a purchasing or  
20           enforcement agency; or



1        (6) The listed subcontractor is unable or refuses to meet  
2                    the contractual requirements or agreements of the  
3                    bidder.

4        As used in this subsection:

5        "Bid peddling" means attempts by a subcontractor to  
6 undercut known bids submitted to the bidder to procure a job.

7        "Bid shopping" means the use of a low bid already received  
8 by the bidder to pressure other subcontractors into submitting  
9 even lower bids.

10        [~~h~~] (i) The contract shall be awarded with reasonable  
11 promptness by written notice to the lowest responsible and  
12 responsive bidder whose bid meets the requirements and criteria  
13 set forth in the invitation for bids. In the event all bids  
14 exceed available funds as certified by the appropriate fiscal  
15 officer, the head of the purchasing agency responsible for the  
16 procurement in question is authorized in situations where time  
17 or economic considerations preclude resolicitation of work of a  
18 reduced scope to negotiate an adjustment of the bid price,  
19 including changes in the bid requirements, with the low  
20 responsible and responsive bidder, in order to bring the bid  
21 within the amount of available funds.



1            [~~(i)~~] (j) When it is not practicable to initially prepare  
2 a purchase description to support an award based on price, an  
3 invitation for bids, which requests the submission of unpriced  
4 offers to be followed by an invitation for bids limited to those  
5 bidders whose offers have been qualified under the criteria set  
6 forth in the first solicitation, may be used. If a multi-step  
7 sealed bidding process is used, the notice and the invitation  
8 for bids shall describe each step to be used in soliciting,  
9 evaluating, and selecting unpriced offers."

10            SECTION 4. This Act does not affect rights and duties that  
11 matured, penalties that were incurred, and proceedings that were  
12 begun before its effective date.

13            SECTION 5. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15            SECTION 6. This Act shall take effect on July 1, 2050.



**Report Title:**

Procurement; Bid Shopping; Bid Peddling

**Description:**

Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Prohibits the bidder from listing more than one subcontractor for each scope of work identified, unless subcontractors vary with bid alternates. (HB573 HD1)

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

