

JAN 25 2017

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.

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

- 19 (1) The form that the notice is to take;
20 (2) What constitutes a reasonable interim between
21 publication and bid opening; and



1 (3) How notice may be published, including publication in
2 a newspaper of general circulation, notice by mail to
3 all persons on any applicable bidders mailing list,
4 publication by any public or private telecommunication
5 information network, or any other method of
6 publication it deems to be effective.

7 (d) Bids shall be opened publicly in the presence of one
8 or more witnesses, at the time and place designated in the
9 invitation for bids. The amount of each bid and other relevant
10 information specified by rule, together with the name of each
11 bidder shall be recorded. The record and each bid shall be open
12 to public inspection.

13 (e) Bids shall be unconditionally accepted without
14 alteration or correction, except as authorized in this chapter
15 or by rules adopted by the policy board.

16 (f) Bids shall be evaluated based on the requirements set
17 forth in the invitation for bids. These requirements may
18 include criteria to determine acceptability such as inspection,
19 testing, quality, workmanship, delivery, and suitability for a
20 particular purpose. Those criteria that will affect the bid
21 price and be considered in evaluation for award shall be
22 objectively measurable, such as discounts, transportation costs,



1 and total or life cycle costs. The invitation for bids shall
2 set forth the evaluation criteria to be used. No criteria may
3 be used in bid evaluation that are not set forth in the
4 invitation for bids.

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

16 (h) The substitution of a listed subcontractor in
17 furtherance of bid shopping or bid peddling before or after the
18 award of the prime contract shall be prohibited, and the
19 originally listed subcontractor may recover monetary damages
20 from the prime contractor who executed a contract with the
21 public entity and the substituted subcontractor, but not from
22 the public entity inviting the bid. It is the prime contractor



1 or substituted subcontractor's burden to prove by a
2 preponderance of the evidence that bid shopping or bid peddling
3 did not occur. Substitution of a listed subcontractor may be
4 made by the prime contractor for the following reasons:

- 5 (1) Refusal of the listed subcontractor to sign a contract
6 with the prime contractor;
- 7 (2) Bankruptcy or insolvency of the listed subcontractor;
- 8 (3) Inability of the listed subcontractor to perform the
9 requirements of the proposed contract or the project;
- 10 (4) Inability of the listed subcontractor to obtain the
11 necessary license, bonding, insurance, or other
12 statutory requirements to perform the work detailed in
13 the contract; or
- 14 (5) The listed subcontractor is barred from participating
15 in the project as a result of a court order or summary
16 judgment.

17 As used in this subsection:

18 "Bid peddling" means attempts by a subcontractor to
19 undercut known bids submitted to the prime contractor to procure
20 a job.



1 "Bid shopping" means the use of a low bid already received
2 by the prime contractor to pressure other subcontractors into
3 submitting even lower bids.

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

16 [~~i~~] (j) When it is not practicable to initially prepare
17 a purchase description to support an award based on price, an
18 invitation for bids, which requests the submission of unpriced
19 offers to be followed by an invitation for bids limited to those
20 bidders whose offers have been qualified under the criteria set
21 forth in the first solicitation, may be used. If a multi-step
22 sealed bidding process is used, the notice and the invitation



S.B. NO. 1070

1 for bids shall describe each step to be used in soliciting,
2 evaluating, and selecting unpriced offers."

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

6 SECTION 5. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect upon its approval.
9

INTRODUCED BY:

Anna Mercado K

SP Rices
Mike Hubbard

Breanne Hunt
Will Zeno

B
Ge. Bell

V. J. J. J. J.
~~Don~~ A.C. Ford
Pe. Allen Jr.

Clarence W. Smith

David H. J.



S.B. NO. 1070

Report Title:

Procurement; Bid Shopping; Bid Peddling

Description:

Prohibits bid shopping and bid peddling for the competitive sealed bidding process.

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

