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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 Hawaii public  
2 procurement code currently requires general contractors to  
3 disclose the subcontractors they intend to use on a project.  
4 The intent of this requirement is to deter bid shopping – the  
5 practice of low-bidding general contractors unethically  
6 extracting lower prices from subcontractors under the threat of  
7 replacement. Although stakeholders agree that the disclosure  
8 requirement accomplishes this goal, the legislature notes that  
9 the federal government and a vast majority of states do not have  
10 a similar disclosure requirement in their procurement processes.

11       The legislature further finds that this disclosure  
12 requirement has the unintended consequence of increasing the  
13 number and complexity of construction protests. The state  
14 procurement office's review of Hawaii procurement laws found  
15 that most protests allege technical issues stemming from the  
16 subcontractor listing requirement. These technical mistakes  
17 include instances where a bidder failed to list a required



1 subcontractor or when a listed subcontractor did not possess the  
2 appropriate license and was not qualified to perform the work.

3 Recommendation III-2 of the state procurement office's  
4 review of Hawaii procurement laws eliminates the requirement for  
5 bidders to disclose the nature and scope of work expected to be  
6 performed by a subcontractor. However, the legislature further  
7 finds that this issue with the subcontractor listing may be  
8 addressed instead by providing prime contractors with additional  
9 time to correct immaterial or technical issues with  
10 subcontractor listings.

11 Inadvertent errors can occur due to the complexity of the  
12 laws regarding contractor licenses under chapter 444, Hawaii  
13 Revised Statutes; title 16, Hawaii Administrative Rules; and the  
14 judicial, quasi-judicial, and agency interpretations of these  
15 laws and rules. Time constraints from when a bidder receives  
16 the bids from all of its subcontractors up until the procuring  
17 agency's bid submission deadline may also cause inadvertent  
18 failures to list a required subcontractor or the listing of  
19 erroneous subcontractor license numbers in a bid. The  
20 legislature further recognizes that the provision of additional  
21 time for prime contractors to correct their subcontractor



1 listings would facilitate the legislature's intent of ensuring  
2 that subcontractors are listed properly on the bid submittal and  
3 are licensed, while maintaining the integrity of the bid  
4 process.

5 The purpose of this Act is to minimize bid challenges,  
6 costs, and delays of public works construction projects for two  
7 years by:

8 (1) Allowing a bidder of a public works construction  
9 project to clarify and correct immaterial or technical  
10 issues with subcontractor listings for up to twenty-  
11 four hours after the bid submission deadline, which  
12 shall be complementary and in addition to the time  
13 allowed by the procurement policy board to correct or  
14 withdraw inadvertently erroneous bids;

15 (2) Requiring that bids for construction be publicly  
16 opened no sooner than twenty-four hours after the bid  
17 submission deadline; and

18 (3) Defining "immaterial or technical information".

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



1       **"§103D-302 Competitive sealed bidding.** (a) Contracts  
2 shall be awarded by competitive sealed bidding except as  
3 otherwise provided in section 103D-301. Awards of contracts by  
4 competitive sealed bidding may be made after single or multi-  
5 step bidding. Competitive sealed bidding does not include  
6 negotiations with bidders after the receipt and opening of bids.  
7 Award is based on the criteria set forth in the invitation for  
8 bids.

9       (b) An invitation for bids shall be issued, and shall  
10 include a purchase description and all contractual terms and  
11 conditions applicable to the procurement. If the invitation for  
12 bids is for construction, it shall [specify]:

13       (1) Specify that all bids include the name of each person  
14       or firm to be engaged by the bidder as a joint  
15       contractor or subcontractor in the performance of the  
16       contract and the nature and scope of the work to be  
17       performed by each[-]; and

18       (2) Allow the bidder to clarify or correct immaterial or  
19       technical information required by paragraph (1) for up  
20       to twenty-four hours after the bid submission  
21       deadline; provided that any additions or substitutions



1       of listed joint subcontractors shall be prohibited,  
2       including changes to the nature and scope of work as  
3       listed; provided further that the twenty-four hour  
4       period shall be complementary and in addition to the  
5       time for correction or withdrawal of inadvertently  
6       erroneous bids before or after award, as permitted in  
7       accordance with rules adopted by the policy board  
8       pursuant to section 103D-302(g).

9       Construction bids that do not comply with this requirement may  
10      be accepted if acceptance is in the best interest of the State  
11      and the value of the work to be performed by the joint  
12      contractor or subcontractor is equal to or less than one per  
13      cent of the total bid amount.

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

- 18           (1) The form that the notice is to take;  
19           (2) What constitutes a reasonable interim between  
20           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~~[-]~~; provided that if the bid is for  
10 construction, it shall be opened no sooner than twenty-four  
11 hours after the deadline for the submission of the bids. The  
12 amount of each bid and other relevant information specified by  
13 rule, together with the name of each bidder shall be recorded.  
14 The record and each bid shall be open to public inspection.

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

18 (f) Bids shall be evaluated based on the requirements set  
19 forth in the invitation for bids. These requirements may  
20 include criteria to determine acceptability such as inspection,  
21 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 as  
3 objectively measurable as possible, such as discounts,  
4 transportation costs, total or life cycle costs, and the  
5 bidder's past performance, if available. The invitation for  
6 bids shall set forth the evaluation criteria to be used. No  
7 criteria may be used in bid evaluation that are not set forth in  
8 the invitation for bids.

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

20 (h) The contract shall be awarded with reasonable  
21 promptness by written notice to the lowest responsible and



1 responsive bidder whose bid meets the requirements and criteria  
2 set forth in the invitation for bids. In the event all bids  
3 exceed available funds as certified by the appropriate fiscal  
4 officer, the head of the purchasing agency responsible for the  
5 procurement in question is authorized in situations where time  
6 or economic considerations preclude resolicitation of work of a  
7 reduced scope to negotiate an adjustment of the bid price,  
8 including changes in the bid requirements, with the low  
9 responsible and responsive bidder, in order to bring the bid  
10 within the amount of available funds.

11 (i) When it is not practicable to initially prepare a  
12 purchase description to support an award based on price, an  
13 invitation for bids, which requests the submission of unpriced  
14 offers to be followed by an invitation for bids limited to those  
15 bidders whose offers have been qualified under the criteria set  
16 forth in the first solicitation, may be used. If a multi-step  
17 sealed bidding process is used, the notice and the invitation  
18 for bids shall describe each step to be used in soliciting,  
19 evaluating, and selecting unpriced offers.

20 (j) For purposes of this section, "immaterial or technical  
21 information" means:





1       (1) An irregularity or abnormality that, as a matter of  
2       form, does not affect substance; or

3       (2) An inconsequential variation that has no, little, or  
4       trivial effect on the procurement process and is not  
5       prejudicial to other vendors.

6       "Immaterial or technical information" includes a missing  
7       signature; typographical errors; an error resulting from an  
8       inaccuracy or omission; and a listed subcontractor whose license  
9       at bid time had been suspended or forfeited due solely to a  
10       ministerial act, pursuant to chapter 444; provided that by the  
11       time of the award, the subcontractor's license is reinstated."

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

14       SECTION 4. This Act shall take effect on July 1, 2112,  
15       provided that on June 30, 2024, this Act shall be repealed and  
16       section 103D-302, Hawaii Revised Statutes, shall be reenacted in  
17       the form in which it read on the day before the effective date  
18       of this Act.

19



**Report Title:**

Procurement; Bid Submissions; Immaterial Errors; Technical  
Corrections; Immaterial or Technical Information

**Description:**

Allows bidders to clarify or correct immaterial or technical information required as part of a bid submission for up to twenty-four hours after the bid submission deadline, in addition to the time for correction or withdrawal of inadvertently erroneous bids before or after the award as permitted by rules adopted by the procurement policy board. Requires that bids for construction be opened no sooner than twenty-four hours after the deadline for the submission of bids. Defines "immaterial or technical information". Repeals 6/30/2024. Effective 7/1/2112. (HD1)

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

