

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 Hawaii Public
2 Procurement Code requires bid proposals to include the name and
3 scope of work of subcontractors and 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 by a bidder to list
8 a required subcontractor or cause a bidder to list an improperly
9 licensed subcontractor in a bid. Oftentimes these technical
10 mistakes in a lowest bidder's proposal results in a bid
11 challenge, thus delaying the execution and delivery of public
12 works projects. Many recent bid challenges have been based on
13 the failure to list a required subcontractor or licensing scope
14 of work issues. As a result of bid challenges, projects are
15 delayed, funding lapses, and inflation increases final project
16 costs.



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 legislature additionally finds that in comparison, the federal
6 government does not require the listing of subcontractors on any
7 bid proposal and the 2000 American Bar Association's Model
8 Procurement Code, the model for the Hawaii Public Procurement
9 Code, does not include a subcontractor listing requirement.
10 Twenty states and the federal government do not even require a
11 general contractor's license to bid on or perform construction
12 work. While subcontractor listing proponents cite legislative
13 intent and the deterrent of bid shopping and bid peddling in
14 support of the listing requirement, it is evident from the
15 number of awards to non-low bidders and increased costs of
16 construction due to the subcontractor listing discrepancies that
17 the listing requirement can result in consequences that the
18 legislature did not intend. Providing prime contractors with
19 additional time to submit a subcontractor list would facilitate
20 the legislature's intent of ensuring that subcontractors are



1 listed properly on the bid submittal and are licensed and
2 qualified in the scope and nature of the work to be performed.

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

11 SECTION 2. Section 103D-302, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By amending subsection (b) to read:

14 "(b) An invitation for bids shall be issued, and shall
15 include a purchase description and all contractual terms and
16 conditions applicable to the procurement. If the invitation for
17 bids is for construction, it shall [~~specify~~]:

18 (1) Specify that all bids include the name of each person
19 or firm to be engaged by the bidder as a joint
20 contractor or subcontractor in the performance of the



1 contract and the nature and scope of the work to be
2 performed by each[-]; and

3 (2) Allow the bidder two working days after the closing of
4 the invitation for bids to provide the information
5 required by paragraph (1). Construction bids that do
6 not comply with [~~this requirement~~] these requirements
7 may be accepted if acceptance is in the best interest
8 of the State and the value of the work to be performed
9 by the joint contractor or subcontractor is equal to
10 or less than one per cent of the total bid amount."

11 2. By amending subsection (d) to read:

12 "(d) Bids shall be opened publicly in the presence of one
13 or more witnesses, at the time and place designated in the
14 invitation for bids[-]; provided that if the bid is for
15 construction, it shall be opened no sooner than two working days
16 after the closing of the invitation for bids. The amount of
17 each bid and other relevant information specified by rule,
18 together with the name of each bidder shall be recorded. The
19 record and each bid shall be open to public inspection."

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



S.B. NO. 1067

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

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S.B. NO. 1067

Report Title:

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

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 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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