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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 requires bid proposals to include the name of  
3 and scope of work to be performed by the subcontractors and  
4 joint contractors that will be used on a public works project.  
5 However, a bidder may inadvertently fail to list a required  
6 subcontractor or list an improperly licensed subcontractor in a  
7 bid due to the complexity of licensing requirements and the time  
8 constraint between the receipt of all subcontractor bids and the  
9 bid submission deadline. These technical mistakes in a low  
10 bidder's proposal often result in a bid challenge, which delays  
11 the execution and delivery of public works projects. Some bid  
12 challenges have been made for failure to list subcontractors  
13 appropriately. As a result of bid challenges, projects are  
14 delayed, funding lapses, and the final project cost may  
15 increase.

16           The legislature further finds that the contractors license  
17 board recognizes over one hundred different specialty contractor



1 licenses, which a prime bidder must sort through to determine  
2 the appropriate subcontractor specialty to be listed on a bid.  
3 The legislature additionally finds that in comparison, the  
4 federal government does not require listing subcontractors on  
5 any bid proposal and the 2000 American Bar Association's Model  
6 Procurement Code - the model used for the Hawaii Public  
7 Procurement Code - does not include a subcontractor listing  
8 requirement. Twenty states and the federal government do not  
9 even require a general contractor's license to bid on or perform  
10 construction work. However, proponents of the subcontractor  
11 listing requirement cite legislative intent and the deterrence  
12 of bid shopping and bid peddling as evidence in support of the  
13 listing requirement. Providing prime contractors with  
14 additional time to correct minor technical issues with  
15 subcontractor listings would facilitate the legislature's intent  
16 by ensuring that subcontractors are listed properly on the bid  
17 submittal and are licensed and qualified in the scope and nature  
18 of the work to be performed, while maintaining the integrity of  
19 the bid process.

20 However, the legislature finds that the unscrupulous  
21 practices of bid shopping and bid peddling still plague Hawaii's  
22 construction industry. The state of Washington prohibits bid



1 shopping and bid peddling and affords subcontractors affected by  
2 those practices a legal means of redress. The legislature finds  
3 that enacting similar legislation will curtail bid shopping and  
4 bid peddling in the State.

5 The purpose of this Act is to:

- 6 (1) Minimize bid challenges, costs, and delays of public  
7 works construction projects by providing a bidder of a  
8 public works construction project with two hours after  
9 the closing of a bid to clarify and correct minor  
10 technical issues with subcontractor listings; and  
11 (2) Further curb undesirable bid shopping and bid peddling  
12 practices in public works by affording subcontractors  
13 affected by those practices a legal means of redress.

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

16 "**§103D-302 Competitive sealed bidding.** (a) Contracts  
17 shall be awarded by competitive sealed bidding except as  
18 otherwise provided in section 103D-301. Awards of contracts by  
19 competitive sealed bidding may be made after single or multi-  
20 step bidding. Competitive sealed bidding does not include  
21 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]:

7 (1) Specify that all bids include the name of each person  
8 or firm to be engaged by the bidder as a joint  
9 contractor or subcontractor in the performance of the  
10 contract and the nature and scope of the work to be  
11 performed by each[-]; and

12 (2) Allow the bidder two hours after the closing of the  
13 invitation for bids to provide clarity and correction  
14 of the subcontractor information required by paragraph  
15 (1) limited to minor entity name corrections and the  
16 validity of a listed subcontractor's license.

17 Construction bids that do not comply with [~~this~~  
18 ~~requirement~~] this subsection may be accepted if acceptance is in  
19 the best interest of the State and the value of the work to be  
20 performed by the joint contractor or subcontractor is equal to  
21 or less than one per cent of the total bid amount.



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

- 5           (1) The form that the notice is to take;
- 6           (2) What constitutes a reasonable interim between  
7           publication and bid opening; and
- 8           (3) How notice may be published, including publication in  
9           a newspaper of general circulation, notice by mail to  
10           all persons on any applicable bidders mailing list,  
11           publication by any public or private telecommunication  
12           information network, or any other method of  
13           publication it deems to be effective.

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



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

4 (f) Bids shall be evaluated based on the requirements set  
5 forth in the invitation for bids. These requirements may  
6 include criteria to determine acceptability such as inspection,  
7 testing, quality, workmanship, delivery, and suitability for a  
8 particular purpose. Those criteria that will affect the bid  
9 price and be considered in evaluation for award shall be  
10 objectively measurable, such as discounts, transportation costs,  
11 and total or life cycle costs. The invitation for bids shall  
12 set forth the evaluation criteria to be used. No criteria may  
13 be used in bid evaluation that are not set forth in the  
14 invitation for bids.

15 (g) Correction or withdrawal of inadvertently erroneous  
16 bids before or after award, or cancellation of invitations for  
17 bids, awards, or contracts based on such bid mistakes, shall be  
18 permitted in accordance with rules adopted by the policy board.  
19 After bid opening no changes in bid prices or other provisions  
20 of bids prejudicial to the interest of the public or to fair  
21 competition shall be permitted. Except as otherwise provided by  
22 rule, all decisions to permit the correction or withdrawal of



1 bids, or to cancel awards or contracts based on bid mistakes,  
2 shall be supported by a written determination made by the chief  
3 procurement officer or head of a purchasing agency.

4 (h) The substitution of a listed subcontractor in  
5 furtherance of bid shopping or bid peddling before or after the  
6 award of the prime contract shall be prohibited, and the  
7 originally listed subcontractor may recover monetary damages  
8 against the prime contractor who executed a contract with the  
9 governmental body and the substituted subcontractor, but shall  
10 not be entitled to monetary damages from the governmental body  
11 that issued the invitation for bids. Substitution of a listed  
12 subcontractor may be made by the prime contractor for the  
13 following reasons:

14 (1) Refusal of the listed subcontractor to sign a contract  
15 with the prime contractor;

16 (2) Bankruptcy or insolvency of the listed subcontractor;  
17 or

18 (3) Inability of the listed subcontractor to perform the  
19 contractual requirements of the proposed contract or  
20 the project consistent with the terms and written  
21 understandings of the parties at the time of the bid.

22 As used in this subsection:



1        "Bid peddling" means attempts by a subcontractor to  
2 undercut known bids submitted to the prime contractor to procure  
3 a job.

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

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

19        [~~(i)~~] (j) When it is not practicable to initially prepare  
20 a purchase description to support an award based on price, an  
21 invitation for bids, which requests the submission of unpriced  
22 offers to be followed by an invitation for bids limited to those





1 bidders whose offers have been qualified under the criteria set  
2 forth in the first solicitation, may be used. If a multi-step  
3 sealed bidding process is used, the notice and the invitation  
4 for bids shall describe each step to be used in soliciting,  
5 evaluating, and selecting unpriced offers."

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

9 SECTION 4. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 5. This Act shall take effect on January 7, 2059.



**Report Title:**

Procurement; Competitive Sealed Bidding; Subcontractor; Public Works Construction Project; Bid Shopping; Bid Peddling

**Description:**

Provides a bidder of a public works construction project with two hours after the closing of bids to clarify and correct certain information regarding subcontractors. Prohibits bid shopping and bid peddling for the competitive sealed bidding process. (SB1070 HD1)

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

