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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 delivery and  
2 award of public works construction projects can be hindered by  
3 bid challenges, resulting in a lapse of funding and other  
4 procurement issues. The legislature further finds that the  
5 execution and completion of public works projects are often  
6 delayed due to bid protests by non-lowest bidders challenging  
7 technical mistakes in the lowest bidder's proposal. As a result  
8 of these bid protests, projects are delayed, funding lapses, and  
9 awards to non-low bidders increase final project costs.

10           Specifically, section 103D-302, Hawaii Revised Statutes,  
11 requires that all subcontractors or joint contractors to be used  
12 on a public works project, along with their scope of work, be  
13 listed on the bid proposal submitted to any state or county  
14 agency subject to the procurement code. The legislature further  
15 finds that many recent bid protests have been based on this  
16 mandatory subcontractor listing requirement, and not on whether  
17 a subcontractor was actually being used.



1           The legislature also finds that time constraints between  
2 the time a bidder receives all subcontractor bids and the bid  
3 submission deadline may cause inadvertent failure to list a  
4 required subcontractor or listing of an improperly licensed  
5 subcontractor in a bid, resulting in a bid protest. Often,  
6 inadvertent errors can occur due to the complexity of the laws  
7 regarding contractor licenses under chapter 444, Hawaii Revised  
8 Statutes; title 16, Hawaii Administrative Rules; and judicial,  
9 quasi-judicial, and agency interpretations of these laws and  
10 rules. The legislature notes that the contractors license board  
11 currently recognizes over one hundred different specialty  
12 contractor licenses that a prime bidder must sort through to  
13 determine the appropriate subcontractor specialty to be listed  
14 on a bid. Hence, bidders and subcontractors sometimes  
15 misunderstand the licensing requirements.

16           In comparison, although they are used extensively for  
17 projects the federal government does not require the listing of  
18 subcontractors on any bid proposal as do over twenty states.  
19 The legislature further recognizes that the 2000 American Bar  
20 Association's Model Procurement Code, the model for Hawaii's  
21 procurement code, does not include such a listing requirement.



1           The legislature therefore finds that it is necessary to  
2 clarify the State's procurement code to reduce the number of  
3 subcontractors that must be listed in a bid proposal, thereby  
4 reducing the number of opportunities to challenge bids on the  
5 basis of subcontractor listing errors. The legislature also  
6 finds that clarifying the State's procurement code does not in  
7 any way change the statutory requirement to use licensed  
8 subcontractors under chapter 444, Hawaii Revised Statutes.

9           However, the legislature understands that implementing such  
10 a change to the procurement bidding process could create  
11 unforeseen difficulties and have unintended consequences.  
12 Therefore, the legislature finds that it is prudent to first  
13 test these changes on a smaller scale with smaller projects to  
14 determine their overall effectiveness in the procurement  
15 process.

16           Accordingly, the purpose of this Act is to create a pilot  
17 program for subcontractor listing to be conducted by the  
18 department of accounting and general services with the  
19 governor's approval.

20           SECTION 2. (a) Notwithstanding any law to the contrary,  
21 including but not limited to chapter 103D, Hawaii Revised



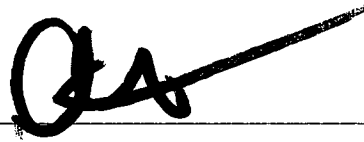
# H.B. NO. 1211

1 Statutes, there is established the subcontractor listing pilot  
2 program to be conducted by the department of accounting and  
3 general services with the governor's approval. Under this  
4 program, the department of accounting and general services shall  
5 identify possible projects with the governor's approval that  
6 shall not require mandatory listing in competitive sealed bids  
7 for state construction projects where the estimated contract  
8 value is less than \$3,000,000.

9 (b) No later than twenty days prior to the convening of  
10 the regular session of 2023, the department of accounting and  
11 general services shall submit a report to the legislature on the  
12 cost effectiveness of, and any efficiencies realized as a result  
13 of, the pilot program.

14 SECTION 3. This Act shall take effect on July 1, 2021.  
15

INTRODUCED BY: \_\_\_\_\_



JAN 26 2021



# H.B. NO. 1211

**Report Title:**

Subcontractor Listing Pilot Program; Procurement; Department of Accounting and General Services; Governor

**Description:**

Establishes the subcontractor listing pilot program to be conducted by the department of accounting and general services. Requires a report to the legislature.

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

