
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 having a third party
2 manage the receipt of construction bids for contractors going
3 through the competitive sealed bidding process will prevent
4 contractors from bid shopping and, with established timetables,
5 promote the submittal of well-considered bids by subcontractors
6 and joint contractors. The use of a bid depository can thereby
7 reduce the likelihood of bid errors, change orders, and
8 additional costs down the line.

9 The legislature further finds that establishing the bid
10 depository within the department of commerce and consumer
11 affairs, which licenses and regulates contractors, would
12 facilitate the fair and independent administration of the bid
13 depository process. The department would also be in an
14 appropriate position to gather and analyze data on the bids
15 submitted to the bid depository to identify collusion trends.

16 The purpose of this Act is to:



- 1 (1) Amend the competitive sealed bidding process for
2 construction projects to require joint contractors and
3 subcontractors to submit their bids to a bid
4 depository established under the department of
5 commerce and consumer affairs;
- 6 (2) Authorize joint contractors and subcontractors to
7 submit different bids to different general contractors
8 bidding on the project;
- 9 (3) Require all bids submitted by joint contractors and
10 subcontractors to be held in the bid depository and
11 withheld from the general contractors until twenty-
12 four hours before the closing of the invitation for
13 bids;
- 14 (4) Require general contractors to use only the bids
15 timely submitted by joint contractors and
16 subcontractors to the bid depository in their
17 construction bid and impose fines for violations; and
- 18 (5) Require the department of commerce and consumer
19 affairs to adopt rules specifying how the bid
20 depository shall operate.



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

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

11 (b) An invitation for bids shall be issued[7] and shall
12 include a purchase description and all contractual terms and
13 conditions applicable to the procurement.

14 (c) If the invitation for bids is for construction, it
15 shall specify that all joint contractors and subcontractors
16 shall submit their bids to a bid depository established under
17 the department of commerce and consumer affairs. Joint
18 contractors and subcontractors shall be authorized to submit
19 different bids to different general contractors bidding on the
20 project. All bids submitted by joint contractors or
21 subcontractors shall be held in the bid depository and shall be



1 released to the general contractors twenty-four hours before the
2 closing of the invitation for bids. General contractors shall
3 use only the bids timely submitted by joint contractors and
4 subcontractors to the bid depository in their construction bid.
5 All construction bids shall include the name of each person or
6 firm to be engaged by the bidder as a joint contractor or
7 subcontractor in the performance of the contract and the nature
8 and scope of the work to be performed by each. Construction
9 bids that do not comply with [~~this requirement~~] the requirements
10 of this subsection may be accepted if acceptance is in the best
11 interest of the State and the value of the work to be performed
12 by the joint contractor or subcontractor is equal to or less
13 than one per cent of the total bid amount.

14 [~~(e)~~] (d) Adequate public notice of the invitation for
15 bids shall be given a reasonable time before the date set forth
16 in the invitation for the opening of bids. The policy board
17 shall 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[+], taking into



1 consideration use of the bid depository for
2 construction bids; and

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

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

15 ~~[(e)]~~ (f) 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~~[-]~~ or, for construction
18 bids only, the department of commerce and consumer affairs.

19 ~~[(f)]~~ (g) Bids shall be evaluated based on the
20 requirements set forth in the invitation for bids. These
21 requirements may include criteria to determine acceptability



1 such as inspection, testing, quality, workmanship, delivery, and
2 suitability for a particular purpose. Those criteria that will
3 affect the bid price and be considered in evaluation for award
4 shall be as objectively measurable as possible, such as
5 discounts, transportation costs, total or life cycle costs, and
6 the bidder's past performance, if available. The invitation for
7 bids shall set forth the evaluation criteria to be used. No
8 criteria may be used in bid evaluation that are not set forth in
9 the invitation for bids.

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



1 head of a purchasing agency[~~-~~] or, for construction bids only,
2 the director of commerce and consumer affairs.

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

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



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

3 (k) The department of commerce and consumer affairs shall
4 adopt rules that specify how the bid depository shall be
5 operated.

6 (l) For construction bids only, a general contractor who
7 does not use the price timely submitted by a joint contractor or
8 subcontractor to the bid depository, in violation of subsection
9 (c) or any rule adopted pursuant to subsection (c), shall be
10 fined \$10,000 or fifteen per cent of the total contract award,
11 whichever is greater, for each separate violation.

12 (m) For purposes of this section, "bid depository" means a
13 facility that receives bids from joint contractors or
14 subcontractors for the supplying of construction services or
15 supplies and presents those bids to the general contractors who
16 intend to bid for the prime contract on a construction project."

17 SECTION 3. Section 103D-303, Hawaii Revised Statutes, is
18 amended by amending subsection (c) to read as follows:

19 "(c) Notice of the request for proposals shall be given in
20 the same manner as provided in section [~~103D-302(e).~~] 103D-
21 302(d)."



1 SECTION 4. Section 103D-318, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§103D-318 Finality of determinations.** The determinations
4 required by sections [~~103D-302(g)~~,] 103D-302(h), 103D-303(a),
5 103D-303(g), 103D-306, 103D-307, 103D-310, 103D-312(e), 103D-
6 313, and 103D-314 shall be final and conclusive unless they are
7 clearly erroneous, arbitrary, capricious, or contrary to law."

8 SECTION 5. Section 103D-323, Hawaii Revised Statutes, is
9 amended by amending subsection (d) to read as follows:

10 "(d) After the bids are opened, they shall be irrevocable
11 for the period specified in the invitation for bids, except as
12 provided in section [~~103D-302(g)~~.] 103D-302(h). If a bidder is
13 permitted to withdraw its bid before award, no action shall be
14 had against the bidder or the bid security."

15 SECTION 6. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 7. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

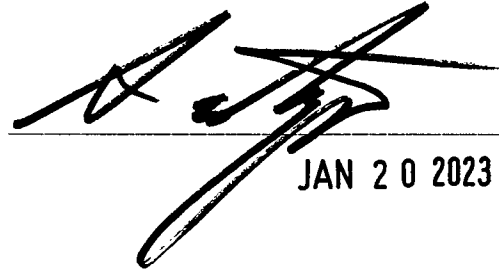
20 SECTION 8. This Act shall take effect on July 1, 2023.

21



H.B. NO. 536

INTRODUCED BY:

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JAN 20 2023



H.B. NO. 536

Report Title:

Procurement; Sealed Bidding; Subcontractors; Contractors; Bid Depositories; Bid Shopping; Fines; State Procurement Office; DCCA

Description:

Amends the competitive sealed bidding process for construction projects to require joint contractors and subcontractors to submit their bids to a bid depository established under DCCA. Authorizes joint contractors and subcontractors to submit different bids to different general contractors bidding on the project. Requires all bids submitted by joint contractors and subcontractors to be held in the bid depository and withheld from the general contractors until twenty-four hours before the closing of the invitation for bids. Requires general contractors to use only the bids timely submitted by joint contractors and subcontractors to the bid depository in their construction bid and imposes fines for violations. Requires DCCA to adopt rules specifying how the bid depository shall operate.

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

