
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 current
2 procurement process for design-build project contracts requires
3 offerors to prepare, in most instances, conceptual design
4 drawings as part of their proposals. This requires a
5 considerable initial investment and may prevent many local firms
6 from submitting proposals for design-build contracts. As a
7 result, purchasing agencies may experience a decrease in
8 competition, an increase in prices, and may potentially be
9 forced to sacrifice design and construction creativity.

10 The purpose of this Act is to provide for the selection of
11 the most qualified offerors for design-build projects and to
12 encourage the participation of Hawaii-based companies, including
13 local small firms, in the design-build proposal process.

14 SECTION 2. Section 103D-104, Hawaii Revised Statutes, is
15 amended by adding a new definition to be appropriately inserted
16 and to read as follows:



1 "Design-build" means a project delivery method in which
2 the procurement officer enters into a single contract for design
3 and construction of an infrastructure facility."

4 SECTION 3. Section 103D-303, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§103D-303 Competitive sealed proposals.** (a) Competitive
7 sealed proposals may be ~~[utilized]~~ used to procure goods,
8 services, or construction ~~[designated in rules adopted by the~~
9 ~~procurement policy board as goods, services, or construction~~
10 ~~which are]~~ that are either not practicable or not advantageous
11 to the State to procure by competitive sealed bidding.

12 ~~[Competitive sealed proposals may also be utilized when the head~~
13 ~~of a purchasing agency determines in writing that the use of~~
14 ~~competitive sealed bidding is either not practicable or not~~
15 ~~advantageous to the State.]~~

16 (b) Proposals shall be solicited through a request for
17 proposals~~[-]~~; provided that for construction projects the
18 procurement officer may procure services using the design-build
19 method; provided further that:

20 (1) The cost of preparing proposals is high in view of the
21 size, estimated prices, and complexity of the
22 procurement;



1 (2) A request for proposals is issued to initially request
2 pre-qualification of offerors, in order to select from
3 among them a short list of up to three responsible
4 offerors; provided that a second request for proposals
5 shall be issued to the pre-qualified offerors selected
6 for the short list prior to submittal of proposals or
7 discussions and evaluations pursuant to subsection
8 (f); provided further that the number of short-listed
9 proposals shall be stated in the request for proposals
10 and prompt public notice shall be given to all
11 offerors as to which proposals have been short-listed;
12 and

13 (3) Nonselected offerors who were pre-qualified and
14 selected for the short list may be paid a conceptual
15 design fee; provided that the amount of the fee and
16 the terms under which the fee is to be paid shall be
17 stated in the request for proposals.

18 (c) Notice of the request for proposals shall be given in
19 the same manner as provided in section 103D-302(c).

20 (d) Proposals shall be opened so as to avoid disclosure of
21 contents to competing offerors during the evaluation process [~~of~~
22 ~~negotiation~~]. A register of proposals shall be prepared [~~in~~



1 ~~accordance with rules adopted by the policy board]~~ and shall be
2 open for public inspection after contract award.

3 (e) The request for proposals shall state the relative
4 importance of price and other evaluation factors.

5 (f) Discussions may be conducted with responsible offerors
6 who submit proposals determined to be reasonably susceptible of
7 being selected for a contract award for the purpose of
8 clarification to assure full understanding of, and
9 responsiveness to, the solicitation requirements. Offerors
10 shall be accorded fair and equal treatment with respect to any
11 opportunity for discussion and revision of proposals, and
12 revisions may be permitted after submissions and prior to award
13 for the purpose of obtaining best and final offers. In
14 conducting discussions, there shall be no disclosure of any
15 information derived from proposals submitted by competing
16 offerors.

17 (g) Award shall be made to the responsible offeror whose
18 proposal is determined in writing to be the most advantageous,
19 taking into consideration price and the evaluation factors set
20 forth in the request for proposals. No other factors or
21 criteria shall be used in the evaluation. The contract file
22 shall contain the basis on which the award is made.



1 (h) In cases of awards made under this section,
2 nonselected offerors may submit a written request for debriefing
3 to the [~~chief~~] procurement officer [~~or designee~~] within three
4 working days after the posting of the award of the contract.
5 Thereafter, the [~~head of the purchasing agency~~] procurement
6 officer shall provide the [~~requester~~] nonselected offeror a
7 prompt debriefing [~~in accordance with rules adopted by the~~
8 ~~policy board~~]. Any protest by the [~~requester~~] nonselected
9 offeror pursuant to section 103D-701 following debriefing shall
10 be filed in writing with the [~~chief~~] procurement officer [~~or~~
11 ~~designee~~] within five working days after the date that the
12 debriefing is completed."

13 SECTION 4. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

16 SECTION 5. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 6. This Act shall take effect on July 1, 2050.



Report Title:

Procurement; Design-build Contracts

Description:

Establishes discretionary request for competitive sealed proposal procedures using the design-build process where not more than three offerors selected on their qualifications submit proposals. Defines design-build. Authorizes the procurement officer to pay a conceptual design fee to unsuccessful offerors. Clarifies process of short-listing of offerors for purposes of nonselection. Effective 7/1/2050. (SD2)

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