

---

## 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 proposal. This requires considerable  
5 upfront investment and may prevent many local firms from  
6 submitting proposals for design-build contracts. As a result,  
7 purchasing agencies may experience a decrease in competition, an  
8 increase in prices, and potentially, may be forced to sacrifice  
9 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-303, Hawaii Revised Statutes, is  
15 amended to read as follows:

16           "**§103D-303 Competitive sealed proposals.** (a) Competitive  
17 sealed proposals may be utilized to procure goods, services, or  
18 construction designated in rules adopted by the procurement



1 policy board as goods, services, or construction which are  
2 either not practicable or not advantageous to the State to  
3 procure by competitive sealed bidding. Competitive sealed  
4 proposals may also be utilized when the head of a purchasing  
5 agency determines in writing that the use of competitive sealed  
6 bidding is either not practicable or not advantageous to the  
7 State.

8 (b) Proposals shall be solicited through a request for  
9 proposals.

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

12 (d) Proposals shall be opened so as to avoid disclosure of  
13 contents to competing offerors during the process of  
14 negotiation. A register of proposals shall be prepared in  
15 accordance with rules adopted by the policy board and shall be  
16 open for public inspection after contract award.

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

19 (f) Discussions may be conducted with responsible offerors  
20 who submit proposals determined to be reasonably susceptible of  
21 being selected for award for the purpose of clarification to  
22 assure full understanding of, and responsiveness to, the



1 solicitation requirements. Offerors shall be accorded fair and  
2 equal treatment with respect to any opportunity for discussion  
3 and revision of proposals, and revisions may be permitted after  
4 submissions and prior to award for the purpose of obtaining best  
5 and final offers. In conducting discussions, there shall be no  
6 disclosure of any information derived from proposals submitted  
7 by competing offerors.

8 (g) Award shall be made to the responsible offeror whose  
9 proposal is determined in writing to be the most advantageous  
10 taking into consideration price and the evaluation factors set  
11 forth in the request for proposals. No other factors or  
12 criteria shall be used in the evaluation. The contract file  
13 shall contain the basis on which the award is made.

14 (h) In cases of awards made under this section,  
15 nonselected offerors may submit a written request for debriefing  
16 to the chief procurement officer or designee within three  
17 working days after the posting of the award of the contract.  
18 Thereafter, the head of the purchasing agency shall provide the  
19 requester a prompt debriefing in accordance with rules adopted  
20 by the policy board. Any protest by the requester pursuant to  
21 section 103D-701 following debriefing shall be filed in writing



1 with the chief procurement officer or designee within five  
2 working days after the date that the debriefing is completed.

3 (i) At the discretion of head of the purchasing agency,  
4 contracts for construction may be procured using the design-  
5 build process of combining design and construction into a single  
6 request for proposal; provided that:

7 (1) A design-build offeror shall be a contractor licensed  
8 under chapter 444 or a design professional licensed  
9 under chapter 464;

10 (2) Submission of proposals shall entail the following:

11 (A) Each interested offeror shall submit to the  
12 purchasing agency a statement of qualifications;

13 (B) The purchasing agency shall designate a selection  
14 committee of qualified, impartial, independent  
15 members, who shall evaluate each offeror's  
16 statement of qualifications and develop a list of  
17 up to five offerors who are deemed to be the most  
18 highly qualified, based upon the following  
19 criteria, in descending order of importance:

20 (i) Experience and qualifications of the staff  
21 relevant to the project type;



- 1           (ii) Past performance on projects of similar
- 2                   scope for public agencies or private
- 3                   industry;
- 4           (iii) Capacity to accomplish the work in the
- 5                   required time; and
- 6           (iv) Location of the principal office and
- 7                   familiarity with the locality of the
- 8                   project;
- 9                   provided that the names of the members of the
- 10                  selection committee shall be placed into the
- 11                  contract file; and
- 12           (C) Offerors selected by the committee may submit
- 13                   proposals to be considered by the purchasing
- 14                   agency for award of the contract; and
- 15           (3) The purchasing agency shall pay the sum of \$5,000,
- 16                   plus two per cent of the amount of the contract to
- 17                   each unsuccessful design-build offeror who submits a
- 18                   technically-responsive proposal; provided that the
- 19                   recipient of the amount shall authorize the agency to
- 20                   use elements of its designs that were included in its
- 21                   proposal; provided further that the recipient of the



# H.B. NO. 2901

1            stipend shall waive its right to protest the award  
 2            pursuant to section 103D-701."

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

6            SECTION 4. New statutory material is underscored.

7            SECTION 5. This Act shall take effect upon its approval.

8

INTRODUCED BY:

*Michael J. Mayaway*

*K. L.*

*John M. ...*

*G. ...*  
*Calvin H. ...*

JAN 27 2010



**Report Title:**

Procurement; Design-build

**Description:**

Establishes special procedures for requests for competitive sealed proposals for design-build projects.

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

