
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] used to procure goods,
18 services, or construction designated in rules adopted by the



1 procurement policy board as goods, services, or construction
2 [~~which~~] that are either not practicable or not advantageous to
3 the State to procure by competitive sealed bidding. Competitive
4 sealed proposals may also be [~~utilized~~] used when the head of a
5 purchasing agency determines in writing that the use of
6 competitive sealed bidding is either not practicable or not
7 advantageous to the 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 the head of the purchasing
4 agency, contracts for construction may be procured using the
5 design-build process of combining design and construction into a
6 single 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;

15 and

16 (3) The purchasing agency shall pay a stipend in the sum
17 of \$ plus per cent of the amount of the
18 contract to each unsuccessful design-build offeror who
19 submits a technically-responsive proposal; provided
20 that:

- 1 (A) The recipient of the stipend shall authorize the
- 2 agency to use elements of its designs that were
- 3 included in its proposal;
- 4 (B) The recipient of the stipend shall waive its
- 5 right to protest the award pursuant to section
- 6 103D-701;
- 7 (C) The purchasing agency may increase the per
- 8 cent to not more than per cent for large or
- 9 complex contracts; and
- 10 (D) Total payments per contract under this paragraph
- 11 shall not exceed \$."

12 SECTION 3. This Act does not affect rights and duties that

13 matured, penalties that were incurred, and proceedings that were

14 begun before its effective date.

15 SECTION 4. Statutory material to be repealed is bracketed

16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect on July 1, 2020.

Report Title:

Procurement; Design-build

Description:

Establishes discretionary request for competitive sealed proposal procedure using the design-build process where not more than five offerors selected on their qualifications submit proposals, and stipends are paid to unsuccessful offerors who allow the agency to use elements of their designs and waive their right to protest the award. Effective July 1, 2020.
(HB2901 HD2)

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