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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 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, construction projects may be procured using the design-  
5 build process of combining design and construction into a single  
6 contract; provided that:

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

9 (2) Submission of proposals shall entail the following, or  
10 as specified in the solicitation in accordance with  
11 subsection (e):

12 (A) Each interested offeror shall submit a statement  
13 of qualifications;

14 (B) The procurement officer shall designate an  
15 evaluation committee of qualified, impartial, and  
16 independent members, who shall evaluate each  
17 offeror's statement of qualifications and develop  
18 a list of no more than five offerors who are  
19 deemed to be the most highly qualified, based  
20 upon the following criteria:

21 (i) Experience and qualifications of the staff  
22 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) Familiarity with the locality of the
- 7                     project;
- 8                     provided that the names of the members of the
- 9                     evaluation committee shall be placed into the
- 10                    contract file; and
- 11           (C) Offerors selected by the committee may submit
- 12                     proposals to be considered for award of the
- 13                     contract;
- 14           (3) When the procurement officer determines that it is
- 15                     advantageous to do so in order to encourage
- 16                     competition and innovation and to increase the best
- 17                     value of offers received without exceeding the budget,
- 18                     the procurement officer shall pay a stipend in an
- 19                     amount determined to be reasonable by the procurement
- 20                     officer;
- 21           (4) If the procurement officer cancels the contract,
- 22                     responsive offerors, including the selected design-



1           build offeror, will receive the stipend. The stipend  
2           shall be paid within ninety days from the award of the  
3           contract or from the day of decision to cancel the  
4           contract; and

5           (5) The request for proposals shall include a statement of  
6           the maximum number of offerors who will be selected to  
7           submit proposals and the amount of the stipend, if  
8           any, that will be provided to offerors who submit a  
9           technically-responsive offer."

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

13           SECTION 4. Statutory material to be repealed is bracketed  
14           and stricken. New statutory material is underscored.

15           SECTION 5. This Act shall take effect on September 14,  
16           2047; provided that this Act shall be repealed on June 30, 2012;  
17           and provided further that section 103D-303, Hawaii Revised  
18           Statutes, shall be reenacted in the form in which it read on the  
19           day prior to the effective date of this Act.

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**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. Authorizes the procurement officer to pay a stipend to the successful and unsuccessful offerors, if the procurement officer determines that it is advantageous do so in order to encourage competition and innovation and to increase the best value of offers received without exceeding the budget. Sunsets on June 30, 2012. Effective September 14, 2047. (SD1)

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

