

HB2901

HD2

LATE

LATE

LINDA LINGLE
GOVERNOR



RUSS K. SAITO
Comptroller

SANDRA L. YAHIRO
Deputy Comptroller

**STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
P.O. BOX 119
HONOLULU, HAWAII 96810-0119**

TESTIMONY
OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE
ON
JUDICIARY AND GOVERNMENT OPERATIONS
ON
March 18, 2010

H.B. 2901, H.D. 2

RELATING TO PROCUREMENT

Chair Taniguchi and members of the Committee, thank you for the opportunity to testify on H.B. 2901, H.D. 2.

The Department of Accounting and General Services (DAGS) understands the intent of this bill and would support it if certain amendments are made to it.

On page 4, lines 8 and 9, the phrase "or a design professional licensed under chapter 464" should be deleted. Design professionals under chapter 464 can be solicited only under Chapter 103D-304 and 103D-307. Including them in this section (103D-303) is a contradiction.

On page 4, line 13, the term "a selection committee" should be replaced with "an evaluation committee". This would be a consistent use of the term under Chapter 103D-303.

On page 4, line 19, the term "in descending order of importance" should be deleted. This is a criterion in Chapter 103D-304 that does not apply to Chapter 103D-303.

On page 5, lines 6-8, this criterion should be deleted. It is discriminatory against out of state companies.

On page 5 lines 16 – 20, should be deleted and replaced with “The purchasing agency shall, when the agency’s procuring officer determines that, to encourage competition, and increase the best value of offers received without exceeding the budget, it is advantageous to do so, the procurement officer shall pay a stipend in an amount determined to be reasonable by the procurement officer.

On page 6, lines 1 through 11 should be deleted. These changes are not necessary and would diminish the procurement code’s evaluation and protest processes.

Thank you for the opportunity to testify on this matter.

LATE

LINDA LINGLE
GOVERNOR



PROCUREMENT POLICY BOARD
DARRYL W. BARDUSCH
LESLIE S. CHINEN
DARYLE ANN HO
KEITH T. MATSUMOTO
RUSS K. SAITO
PAMELA A. TORRES

AARON S. FUJIOKA
ADMINISTRATOR

**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 587-4700 Fax: (808) 587-4703
<http://hawaii.gov/spo>

TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
SENATE COMMITTEE
ON
JUDICIARY AND GOVERNMENT OPERATIONS

March 18, 2010

10:00 a.m.

HB 2901, HD2

RELATING TO PUBLIC PROCUREMENT.

Chair Taniguchi, Vice-Chair Takamine, and committee members, thank you for the opportunity to testify on HB 2901, HD2. This bill proposes to create a process in §HRS 103D-303 for design-build contracts by combining design and construction into a single request for proposal. There are several concerns which the State Procurement Office (SPO) would like to point out.

On page 4, lines 7-9, this proposed amendment for §103D-303 allowing "A design-build offeror ... design professional licensed under chapter 464 ..." to submit an offer is in conflict with §103D-304(a) which states that "... design professional services furnished by licensees under chapter 464 shall be procured pursuant to this section or §103D-307.

This bill also provides for compensation to each unsuccessful design-build offeror who submits a technically-responsive proposal. The recipient of the amount shall authorize the agency to use elements of its design that were included in its proposal. The proposed bill language suggests that an agency may switch the contents of the non-selected or non-awarded proposal and substitute it for the selected offeror's proposal. That practice is not permitted as it would undermine the evaluation process and the basis of the award and invite protests. The award is based on the specific contents of the individual proposal and not based on various pieces taken from various proposals. This scenario of using concepts/ideas from other offerors to incorporate into a proposal is usually reserved for the Request for Information process in the development of the solicitation. Once a solicitation or the request for proposals is issued, all elements for evaluation are stated in the document, to ensure all participants are given equal opportunity to be evaluated fairly.

HB 2901, HD2
Senate Committee on Judiciary and Government Operations
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Page 2

The SPO supports the intent of this bill. Should the committee decide to move this bill, we suggest the attached amendments.

Thank you.

Attachment

ATTACHMENT

SECTION 2. Section 103D-303, Hawaii Revised Statutes, is amended to read as follows:

"§103D-303 Competitive sealed proposals. (a) Competitive sealed proposals may be [~~utilized~~] used to procure goods, services, or construction designated in rules adopted by the procurement policy board as goods, services, or construction [~~which~~] that are either not practicable or not advantageous to the State to procure by competitive sealed bidding. Competitive sealed proposals may also be [~~utilized~~] used when the head of a purchasing agency determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State.

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

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

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

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

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

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

(h) In cases of awards made under this section, nonselected offerors may submit a written request for debriefing to the chief procurement officer or designee within three working days after the posting of the award of the contract. Thereafter, the head of the purchasing agency shall provide the

requester a prompt debriefing in accordance with rules adopted by the policy board. Any protest by the requester pursuant to section 103D-701 following debriefing shall be filed in writing with the chief procurement officer or designee within five working days after the date that the debriefing is completed.

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

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

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

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

(B) The ~~purchasing agency~~ procurement officer shall designate ~~a selection an~~ evaluation committee of qualified, impartial, independent

members, who shall evaluate each offeror's
statement of qualifications and develop a list of
up to no more than five offerors who are deemed
to be the most highly qualified, based upon the
following criteria, in descending order of
importance:

- (i) Experience and qualifications of the staff
relevant to the project type;
- (ii) Past performance on projects of similar scope
for public agencies or private industry;
- (iii) Capacity to accomplish the work in the
required time; and
- (iv) Location of the principal office and
familiarity with the locality of the
project;

provided that the names of the members of the
selection evaluation committee shall be placed
into the contract file; and

- (C) Offerors selected by the committee may submit
proposals to be considered by the purchasing
agency for award of the contract.

(3) The purchasing agency procurement officer shall determine the amount to pay a stipend in the sum of \$ _____ plus _____ per cent of the amount of the contract to each unsuccessful design-build offeror who submits a technically-responsive proposal offer; provided that:

(4) If the procurement officer cancels the contract, responsive offerors, including the selected design-build offeror, will receive the stipend. The stipend shall be paid within 90 days from the award of the contract or from the day of the decision to cancel the contract; and

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

~~(A) The recipient of the stipend shall authorize the agency to use elements of~~

~~its designs that were included in its
proposal;~~

~~(B) The recipient of the stipend shall waive
its right to protest the award pursuant to
section 103D-701;~~

~~(C) The purchasing agency may increase the
_____ per cent to not more than _____ per
cent for large or complex contracts; and~~

~~(D) Total payments per contract under this
paragraph shall not exceed \$ _____."~~

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

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

SECTION 5. This Act shall take effect on July 1,
20202010.

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March 17, 2010

EMAILED TESTIMONY

**Hearing Date: Thursday, March 18, 10:00 a.m., Conference Room 016
(Senate Committee on Judiciary and Government Operations)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Judiciary and Government Operations

Subject: HB 2901 HD2, Relating to Procurement

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

Austin, Tsutsumi & Associates, Inc. strongly **supports HB 2901, Relating to Procurement**. HB 2901 would put in place a two-step process for procuring design-build teams. At the first stage, potential design-build teams would submit their qualifications particular to the proposed project. A selection committee would select the most qualified teams (three to five) that would then proceed to the second proposal stage. The second step is issuance of a request for proposals and evaluation of technical and price proposals from the pre-qualified/short-listed teams. The second step may include the opportunity for the design-build teams to obtain pre-approval of alternative technical concepts, and may include discussions/negotiations followed by subsequent proposals (best and final offers).

This two-step process serves to reduce industry costs in responding to requests for design-build proposals and to encourage the most qualified design-builders to participate by increasing their chances of success. The two-step process also reduces the cost to the agency of reviewing the proposals by ensuring the agency reviews a select number of proposals from the most highly qualified teams. It should not significantly increase time needed for the procurement process, as the initial request for qualifications can be a shorter time period, and limiting the proposals to only the most qualified teams means fewer proposals for an agency to review.

HB 2901 also provides for the granting of a stipend to the losing short-listed teams. Preparation of a design-build proposal is an onerous one, and studies have shown that the use of stipends encourage competition by allowing more firms to participate.

We appreciate the opportunity to provide testimony in support of HB 2901. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,
Austin, Tsutsumi & Associates, Inc.

Terrance S. Arashiro, P.E.
Senior Vice President & Chief Engineer

REPLY TO:
501 SUMNER STREET, SUITE 521 • HONOLULU, HAWAII 96817-5031
PHONE (808) 533-3646 • FAX (808) 526-1267
EMAIL : atahnl@atahqwall.com

OFFICES IN:
HONOLULU, HAWAII
WAILUKU, MAUI, HAWAII
HILO, HAWAII



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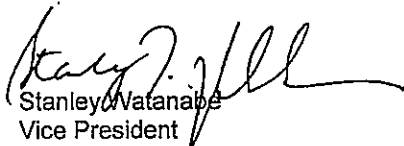
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Stanley Watanabe
Vice President



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Erik Kaneshiro, LPLS
Chief Lands Surveyor

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Neal Kasamoto, PE
Traffic Engineer

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Trisha Higuchi, PE
Project Engineer

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A handwritten signature in black ink, appearing to read 'DeAnna Hayashi', is written over a horizontal line.

DeAnna Hayashi, P.E.
Assistant Chief Engineer

REPLY TO:
501 SUMNER STREET, SUITE 521 • HONOLULU, HAWAII 96817-5031
PHONE (808) 533-3646 • FAX (808) 526-1267
EMAIL : afohn@aahqwall.com

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Jared Mimura, PE
Project Manager

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501 SUMNER STREET, SUITE 521 • HONOLULU, HAWAII 96817-5031
PHONE (808) 533-3646 • FAX (808) 526-1267
EMAIL: alahn@atahawaii.com

OFFICES IN:
HONOLULU, HAWAII
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This two-step process serves to reduce industry costs in responding to requests for design-build proposals and to encourage the most qualified design-builders to participate by increasing their chances of success. The two-step process also reduces the cost to the agency of reviewing the proposals by ensuring the agency reviews a select number of proposals from the most highly qualified teams. It should not significantly increase time needed for the procurement process, as the initial request for qualifications can be a shorter time period, and limiting the proposals to only the most qualified teams means fewer proposals for an agency to review.

HB 2901 also provides for the granting of a stipend to the losing short-listed teams. Preparation of a design-build proposal is an onerous one, and studies have shown that the use of stipends encourage competition by allowing more firms to participate.

We appreciate the opportunity to provide testimony in support of HB 2901. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,
Austin, Tsutsumi & Associates, Inc.

Paul Arita, P.E.
Project Manager

REPLY TO:
501 SUMNER STREET, SUITE 521 • HONOLULU, HAWAII 96817-5031
PHONE (808) 533-3646 • FAX (808) 526-1267
EMAIL : atahnl@atahawaii.com

OFFICES IN:
HONOLULU, HAWAII
WAILUKU, MAUI, HAWAII
HILO, HAWAII



KENNETH K. KUROKAWA, P.E.
TERRANCE S. ARASHIRO, P.E.
DONOHUE M. FUJII, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
ADRIENNE W. L. H. WONG, P.E., LEED AP

March 17, 2010

EMAILED TESTIMONY

**Hearing Date: Thursday, March 18, 10:00 a.m., Conference Room 016
(Senate Committee on Judiciary and Government Operations)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Judiciary and Government Operations

Subject: **HB 2901 HD2, Relating to Procurement**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

Austin, Tsutsumi & Associates, Inc. strongly supports **HB 2901, Relating to Procurement**. HB 2901 would put in place a two-step process for procuring design-build teams. At the first stage, potential design-build teams would submit their qualifications particular to the proposed project. A selection committee would select the most qualified teams (three to five) that would then proceed to the second proposal stage. The second step is issuance of a request for proposals and evaluation of technical and price proposals from the pre-qualified/short-listed teams. The second step may include the opportunity for the design-build teams to obtain pre-approval of alternative technical concepts, and may include discussions/negotiations followed by subsequent proposals (best and final offers).

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We appreciate the opportunity to provide testimony in support of HB 2901. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,
Austin, Tsutsumi & Associates, Inc.

Matthew "Kimo" Unten
Project Engineer

LATE



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Subject: HB 2901 HD2, Relating to Procurement

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We appreciate the opportunity to provide testimony in support of HB 2901. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,
Austin, Tsutsumi & Associates, Inc.

Lee Yokomizo, PE
Traffic Engineer

REPLY TO:
501 SUMNER STREET, SUITE 521 • HONOLULU, HAWAII 96817-5031
PHONE (808) 533-3645 • FAX (808) 525-1267
EMAIL : atahn@atahawaii.com

OFFICES IN:
HONOLULU, HAWAII
WAILUKU, MAUI, HAWAII
HILO, HAWAII