



GOV. MSG. NO. 1315

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 11, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 11, 2011, the following bill was signed into law:

HB985 HD2 SD2 CD1

RELATING TO PROCUREMENT.
Act 211 (11)

Aloha
Sincerely,
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

JUL 11 2011

on

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

ACT 211

H.B. NO. 985
H.D. 2
S.D. 2
C.D. 1

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 contracts requires offerors
3 to prepare, in most instances, conceptual design drawings as
4 part of their proposals. This requires a considerable initial
5 investment and may prevent many local firms from submitting
6 proposals for design-build contracts. As a result, purchasing
7 agencies may experience a decrease in competition and an
8 increase in prices, and may potentially 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 contracts and to
12 encourage the participation of Hawaii-based companies, including
13 local small firms, in the design-build contract proposal
14 process.

15 SECTION 2. Section 103D-104, Hawaii Revised Statutes, is
16 amended by adding a new definition to be appropriately inserted
17 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."

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.

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 process of
22 ~~[negotiation-]~~ evaluation. A register of proposals shall be



1 prepared [~~in accordance with rules adopted by the policy board~~]
2 and shall be 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~~] likely to be selected for a contract award for the
8 purpose of 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 ~~[nonsselected]~~ non-selected offerors may submit a written request
3 for debriefing to the ~~[chief]~~ procurement officer ~~[or designee]~~
4 within three working days after the posting of the award of the
5 contract. Thereafter, the ~~[head of the purchasing agency]~~
6 procurement officer shall provide the ~~[requester]~~ non-selected
7 offeror a prompt debriefing ~~[in accordance with rules adopted by~~
8 ~~the policy board]~~. Any protest by the ~~[requester]~~ non-selected
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]~~ upon
12 which the debriefing is completed.

13 (i) In addition to any other provisions of this section,
14 construction projects may be solicited through a request for
15 proposals to use the design-build method; provided that:

16 (1) A request for proposals is issued to prequalify
17 offerors to select a short list of no more than three
18 responsible offerors, prior to the submittal of
19 proposals; provided that the number of offerors to be
20 selected for the short list shall be stated in the
21 request for proposals and prompt notice is given to



1 all offerors as to which offerors have been short
2 listed;

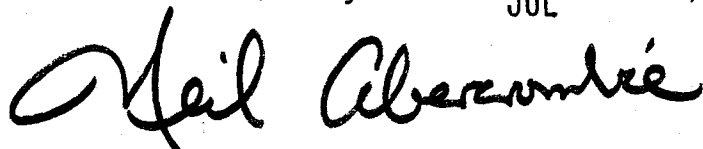
3 (2) A conceptual design fee may be paid to non-selected
4 offerors that submit a technically responsive
5 proposal; provided that the cost of the entire project
6 is greater than \$1,000,000; and

7 (3) The criteria for pre-qualification of offerors, design
8 requirements, development documents, proposal
9 evaluation criteria, terms of the payment of a
10 conceptual design fee, or any other pertinent
11 information shall be stated in the request for
12 proposals."

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 July 1, 2011.

APPROVED this 11 day of JUL , 2011



GOVERNOR OF THE STATE OF HAWAII

