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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 proposals. This requires a  
5 considerable initial investment and may prevent many local firms  
6 from submitting proposals for design-build contracts. As a  
7 result, purchasing agencies may experience a decrease in  
8 competition, an increase in prices, and may potentially be  
9 forced to sacrifice 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-104, Hawaii Revised Statutes, is  
15 amended by adding a new definition to be appropriately inserted  
16 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 of an infrastructure facility."

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[-]; provided that for construction projects the  
18 procurement officer may procure services using the design-build  
19 method; provided further that:

20        (1) The cost of preparing proposals is high in view of the  
21 size, estimated prices, and complexity of the  
22 procurement;



1       (2) A request for proposals is issued to initially request  
2       pre-qualification of offerors, in order to select from  
3       among them a short list of up to three responsible  
4       offerors; provided that a second request for proposals  
5       shall be issued to the pre-qualified offerors selected  
6       for the short list prior to submittal of proposals or  
7       discussions and evaluations pursuant to subsection  
8       (f); provided further that the number of short-listed  
9       proposals shall be stated in the request for proposals  
10       and prompt public notice shall be given to all  
11       offerors as to which proposals have been short-listed;  
12       and

13       (3) Nonselected offerors who were pre-qualified and  
14       selected for the short list may be paid a conceptual  
15       design fee; provided that the amount of the fee and  
16       the terms under which the fee is to be paid shall be  
17       stated in the request for 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 evaluation process [~~of~~  
22 negotiation]. A register of proposals shall be prepared [~~in~~



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

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

16 SECTION 5. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 6. This Act shall take effect on July 1, 2117.



**Report Title:**

Procurement; Design-Build Contracts

**Description:**

Establishes the use of the design-build process where the cost of preparing proposals is high, relative to the size, estimated price, and complexity of the project. Authorizes a two-part process where prequalified applicants will be short-listed to submit design proposals. The short list shall be publically disclosed. Allows for payment of a conceptual design fee to nonselected offerors. Effective 7/1/2117. (SD2)

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

