

JAN 21 2011

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-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 are~~] that are either not practicable or not advantageous
3 to the State to procure by competitive sealed bidding.

4 Competitive sealed proposals may also be [~~utilized~~] used when
5 the head of a purchasing agency determines in writing that the
6 use of competitive sealed bidding is either not practicable or
7 not 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 a contract award for the purpose of
22 clarification to assure full understanding of, and



1 responsiveness to, the solicitation requirements. Offerors
2 shall be accorded fair and equal treatment with respect to any
3 opportunity for discussion and revision of proposals, and
4 revisions may be permitted after submissions and prior to award
5 for the purpose of obtaining best and final offers. In
6 conducting discussions, there shall be no disclosure of any
7 information derived from proposals submitted by competing
8 offerors.

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

15 (h) In cases of awards made under this section,
16 nonselected offerors may submit a written request for debriefing
17 to the chief procurement officer or designee within three
18 working days after the posting of the award of the contract.
19 Thereafter, the head of the purchasing agency shall provide the
20 requester a prompt debriefing in accordance with rules adopted
21 by the policy board. Any protest by the requester pursuant to
22 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 two-phased
10 approach described as follows, or as specified in the
11 solicitation in accordance with subsection (e):

12 (A) Each interested offeror shall submit a statement
13 of qualifications. This phase shall be
14 considered the request for qualifications phase;

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



- 1 (i) Experience and qualifications of the
- 2 offeror's team relevant to the project type;
- 3 (ii) Past performance on projects of similar
- 4 scope for public agencies or private
- 5 industry;
- 6 (iii) Capacity to accomplish the work in the
- 7 required time; and
- 8 (iv) Location of the principal office and
- 9 familiarity with the locality of the
- 10 project;
- 11 provided that the names of the members of the
- 12 evaluation committee shall be placed into the
- 13 contract file; and
- 14 (C) Offerors selected by the committee may submit
- 15 proposals to be considered for award of the
- 16 contract. This phase shall be considered the
- 17 request for proposal phase;
- 18 (3) At the onset of the request for proposal phase, the
- 19 purchasing agency shall determine and include a
- 20 statement of the maximum number of offerors who will
- 21 be selected to submit proposals, and the amount of the



- 1 conceptual design fee that will be provided to
2 offerors who submit a technically-responsive offer;
3 (4) If the procurement officer cancels the contract,
4 responsive offerors, including the selected design-
5 build offeror, shall receive the conceptual design
6 fee; and
7 (5) The conceptual design fee shall be paid within ninety
8 days from the award of the contract or from the day of
9 the decision to cancel the contract."

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 July 1, 2011.

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INTRODUCED BY:

Arvid Ylge



Report Title:

Procurement; Design-build Contracts

Description:

Establishes discretionary request for competitive sealed proposal procedures using the design-build process where not more than five offerors selected on their qualifications submit proposals. Authorizes the chief procurement officer to pay a conceptual design fee to technically-responsive unsuccessful offerors or to technically-responsive offerors if the procurement is cancelled.

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