
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 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 construction,
8 goods, or services [~~, or construction designated in rules adopted~~
9 ~~by the procurement policy board as goods, services, or~~
10 ~~construction which are~~] that are either not practicable or not
11 advantageous to the State to procure by competitive sealed
12 bidding. [~~Competitive sealed proposals may also be utilized~~
13 ~~when the head of a purchasing agency determines in writing that~~
14 ~~the use of competitive sealed bidding is either not practicable~~
15 ~~or not 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 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~~] upon
12 which the debriefing is completed.

13 (i) In addition to any other provisions of this section,
14 construction projects may be procured using the design-build
15 method as follows:

16 (1) The procurement officer shall issue a request for
17 qualifications in advance of the request for proposals
18 to prequalify offerors; provided that a short list of
19 no more than three responsible offerors, based on the
20 qualifications stated in their proposals, shall be
21 selected prior to the submittal of proposals. The
22 number of offerors to be selected for the short list



1 shall be stated in the request for qualifications, and
2 the procurement officer shall provide prompt notice to
3 all offerors as to which offerors have been short
4 listed; and

5 (2) The procurement officer shall issue a request for
6 proposals to the offerors selected for the short list
7 in paragraph (1). The request for proposals shall
8 include design requirements, solicit proposal
9 development documents, and state proposal evaluation
10 criteria. The procurement officer may pay a
11 conceptual design fee to nonselected offerors that
12 submit a technically responsive proposal to the
13 request for proposals in this paragraph; provided that
14 the terms of the payment of a conceptual design fee
15 shall be stated in the request for qualifications and
16 the request for proposals."

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 Statutory material to be repealed is bracketed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

19 SECTION 5. This Act shall take effect on July 1, 2030.



Report Title:

Procurement; Design-build Contracts

Description:

Establishes discretionary request for competitive sealed proposal procedures using a two-step design-build process. Defines design-build. Authorizes the procurement officer to pay a conceptual design fee to unsuccessful offerors. Clarifies process of short-listing of offerors for purposes of nonselection. Effective July 1, 2030. (SB779 HD2)

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