

**HB 985, HD2**

NEIL ABERCROMBIE  
GOVERNOR



BRUCE A. COPPA  
Comptroller

RYAN OKAHARA  
Deputy Comptroller

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

TESTIMONY  
OF  
BRUCE A. COPPA, COMPTROLLER  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
TO THE  
SENATE COMMITTEE  
ON  
PUBLIC SAFETY, GOVERNMENT OPERATIONS, & PUBLIC AFFAIRS  
ON  
March 22, 2011  
H.B. 985, H.D. 2

RELATING TO PROCUREMENT

Chair Espero and members of the Committee, thank you for the opportunity to testify on H.B. 985, H.D. 2.

The Department of Accounting and General Services supports H.B. 985, H.D. 2 and defers to the State Procurement Office testimony.

Thank you for the opportunity to testify on this matter.

NEIL ABERCROMBIE  
GOVERNOR



AARON S. FUJIOKA  
ADMINISTRATOR

**STATE OF HAWAII**  
**STATE PROCUREMENT OFFICE**  
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TESTIMONY  
OF  
AARON S. FUJIOKA  
ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE  
SENATE COMMITTEE  
ON  
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS

March 22, 2011

3:00 p.m.

HB 985, HD 2

RELATING TO PROCUREMENT.

Chair Espero, Vice Chair Kidani and committee members, thank you for the opportunity to testify on HB 985, HD 2. This bill amends §103D-303 on competitive sealed proposals, or commonly known as requests for proposals (RFP) procurement method, to create an optional process for design-build contracts by combining design and construction into a single request for proposal.

The SPO supports the intent of this bill, however, proposes the attached changes for your consideration, to clarify the proposed amendments to the section.

Thank you.

SECTION 3. Section 103D-303, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

"(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 are]~~ that is either not practicable or not advantageous to the State to procure by competitive sealed bidding. ~~[Competitive sealed proposals may also be utilized 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~~[-]~~; provided that for construction projects, the procurement officer may determine to use the design-build method where the cost of preparing proposals is high relative to the size, estimated price, and complexity of the procurement. If the design-build method is employed, the procurement officer shall:

- (1) Issue a request for proposals to prequalify offerors to select a short list of up to five responsible offerors prior to submittal of proposals or discussions and evaluations pursuant to subsection (f); provided that the number of proposals that will be short-listed is stated in the request for proposals and prompt public notice is given to all offerors as to which proposals have been short-listed; ~~or~~ and
- (2) Pay ~~[stipends]~~ conceptual design fee to unsuccessful prequalified offerors; provided that the amount of the ~~[stipend]~~ fee and the terms under which the ~~[stipends]~~

fee will be paid are stated in the request for proposals."

2. By amending subsection (d) to read:

"(d) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of ~~[negotiation-]~~ evaluation. 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."

3. By amending subsection (f) through (h) to read:

"(f) Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably ~~[susceptible of being]~~ likely to be selected for a contract 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~~] procurement officer shall provide the [~~requester~~] nonselected offeror a prompt debriefing [~~in accordance with rules adopted by the policy board~~]. Any protest by the [~~requester~~] nonselected offeror 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~~] upon which the debriefing is completed."

SECTION 5. This Act shall take effect on ~~July 1, 2012~~  
January 1, 2012.

JUSTIFICATION:

Limit the short-list to 'up to five' responsible offerors so that all potential offerors are not impacted in preparing the RFP proposal.

As these steps are still within the competitive sealed proposal (aka request for proposal) process, notice is limited to the Offerors. Upon award of a contract, a public notice of award is made.

Conceptual design fees are limited and allowed to the short-listed prequalified offerors.

Delete [~~chief~~] for consistently of this section to ensure the procurement officer is responsible.

The effective date for this bill be delayed to allow for development of interim rules to implement this section.



AMERICAN COUNCIL OF ENGINEERING COMPANIES  
of Hawaii

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March 21, 2011

**Senate Committee on Public Safety, Government Operations, and Military Affairs**  
**Hearing Date: Tuesday, March 22, 3:00 p.m., Conference Room 224**

Honorable Senators Will Espero, Chair; Michelle Kidani, Vice Chair; and Members of the Senate Committee on Public Safety, Government Operations, and Military Affairs

**Subject: HB 985 HD 2, Relating to Procurement**  
**TESTIMONY IN SUPPORT**

Dear Chair Espero, Vice Chair Kidani, and Committee Members:

The American Council of Engineering Companies of Hawaii (ACECH) represents 67 member firms with over 1,300 employees throughout Hawaii, most of which are small businesses. We are comprised of the most highly qualified engineers, land surveyors, scientists, and other specialists. **ACECH strongly supports HB 985, HD2, Relating to Procurement.** The revised bill would provide for the procurement of design-build contract teams in a manner used by the Federal Government and many other jurisdictions. As you are aware, this bill is the companion to SB779, which your Committee passed out earlier with a SD1. We propose modifying HB985 to match the senate version of the bill, SB779 SD1.

The purpose of the bill is to 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 (preferably no more than three) that would then proceed to the second proposal stage. The two-step process serves to reduce industry costs in responding to requests for design-build proposals, to encourage the most qualified design-builders to participate by increasing their chances of success, and to reduce the cost to the agency of reviewing the proposals.

The bill would also provide for the granting of a stipend (conceptual design fee) to the unsuccessful short-listed teams. The design-build situation is completely different than the normal design-bid-build process, because the designers must prepare partial design documents as part of the proposal process. Preparation of a design-build proposal is an onerous task, and teams can spend more than \$1 million to prepare their proposal. Studies have shown that the providing even a nominal fee to the losing teams encourages more teams to participate. In Hawaii, many of our local Architectural and Engineering firms are small businesses, and many do not participate in design-build procurements because of the high cost of preparing the partial design document. Providing a conceptual design fee would encourage more of our small firms to participate in design-build projects.

We appreciate the opportunity to provide testimony regarding this measure. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,

AMERICAN COUNCIL OF ENGINEERING COMPANIES OF HAWAII

Sheryl E. Nojima, PhD, PE  
President

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**GCA of Hawaii**

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

March 22, 2011

TO: THE HONORABLE SENATOR WILL ESPERO, CHAIR AND MEMBERS OF THE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS

SUBJECT: H.B. 985, HD2 RELATING TO PROCUREMENT.

NOTICE OF HEARING

DATE: Tuesday, March 22, 2011  
TIME: 3:00 p.m.  
PLACE: Conference Room 224

Dear Chair Espero and Members of the Committee:

The General Contractors Association (GCA), an organization comprised of over five hundred and eighty (580) general contractors, subcontractors, and construction related firms, supports the passage of H.B. 985, HD2 Relating To Procurement, and suggests amendments as noted in the attached. Please note the attached amendments are to the companion Senate bill S.B. 779 SD2 that is nearly identical to H.B. 985 HD2 and therefore may be similarly applied herein.

H.B. 985, HD2 proposes to enact a design build (D-B) procurement process modeled on the 2000 Model procurement Code of the American Bar Association. The proposed bill will give the procurement officer important minimal guidelines when using the design build process for procuring construction services that include:

1. Delineating a two-step D-B process
2. Selecting up to only 3 offerors for step two, the most costly part of competing in the D-B process
3. Providing for a conceptual design fee to help defray costs of the step two proposals to encourage quality proposals

The attached suggested amendments put the D-B process in a subsection of HRS Section 103D-303 that does not preclude using the rest of the section for other innovative procurement processes.

The GCA believes that the implementation of this two step procedure for the procurement of design build construction projects as proposed in HB 985, HD2 will result in enhanced proposal quality and provide the State with the most innovative and cost effective proposals.

The GCA recommends that the House Committee on Finance pass HB 985, HD2.

Thank you for the opportunity to testify on this matter.



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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 [ef  
22 negotiation]. A register of proposals shall be prepared [~~if~~

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, 2050.

*Insert "(i)...." here*



**Report Title:**  
Procurement; Design-build Contracts

**Description:**  
Establishes discretionary request for competitive sealed proposal procedures using the design-build process where not more than three offerors selected on their qualifications submit proposals. 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 7/1/2050. (SD2)

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



Proposed Design Build Insert into SB779 and HB985

Dated: 03-20-2011

(i) Design-Build Procurement - Construction projects may be procured using the design-build method that follows the minimum requirements of the two-step process described below and includes the requirements of subsections (a) through (h) not in conflict with this subsection:

- (A) In step one, a Request for Qualifications is issued in advance of the Request for Proposals to initially pre-qualify offerors, selecting a short list of up to three (3) responsible offerors based on qualification proposals submitted among them; provided that the number of proposals that will be short listed is stated in the Request for Qualifications and prompt public notice shall be given to all offerors as to which proposals have been short listed.
- (B) In step two, selected offerors from step one will be issued a Request for Proposals that include design requirements and that solicit proposal development documents with evaluation factors clearly delineated in the Request for Proposals; provided that non-selected offerors in step two who submit technically responsive proposals may be paid a conceptual design fee; provided further that the amount of such conceptual design fee and the terms under which said fee will be paid are stated in the Request for Qualifications and the Request for Proposals.

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March 21, 2011



**Senate Committee on Public Safety, Government Operations, and Military Affairs**  
**Hearing Date: Tuesday, March 22, 3:00 p.m., Conference Room 224**

Honorable Senators Will Espero, Chair; Michelle Kidani, Vice Chair; and Members of the Senate Committee on Public Safety, Government Operations, and Military Affairs

**Subject: HB 985 HD 2, Relating to Procurement**  
**TESTIMONY IN SUPPORT**

Dear Chair Espero, Vice Chair Kidani, and Committee Members:

Brown and Caldwell strongly supports **HB 985, HD 2, Relating to Procurement**. The revised bill would facilitate the procurement of design-build (D-B) teams in a manner used by the Federal Government and many other States and government entities. This bill is the companion to SB779, which this Committee passed out earlier with a SD1

HB 985, HD 2 would provide for a two-step process for procuring D-B teams. At the first stage, potential D-B offerors would submit their statement of qualifications (SOQs) in response to the request for qualifications for a specific project. A selection committee would then review the SOQs and select the most qualified D-B teams (preferably no more than three offerors) that would then be invited to participate in a second stage of providing a detailed proposal for the project. This two-step procurement process serves to reduce industry costs in responding to requests for proposals by allowing qualified D-B teams to provide a more focused effort once they are short-listed on a project, and encourage the most qualified design-builders to participate, as their chances of success is greatly increased once they reach the second stage of procurement. The two-step process also reduces the cost to the agency reviewing the proposals, as the SOQs provided during the first stage are more concise, and there are fewer detailed proposals from short-listed firms to review during the second stage.

HB 985, HD 2 would also provide for the granting of a conceptual design fee to the unsuccessful short-listed teams. The design-build situation is completely different than the normal design-bid-build process, because the designers must prepare partial design documents as part of the proposal process. Preparation of a D-B proposal is an onerous and costly task, and D-B teams can spend a significant amount of time and money to prepare their conceptual design and proposal. Studies have shown that providing even a nominal fee to the short-listed teams encourages more D-B teams to compete. We feel that providing a conceptual design fee for short-listed firms would encourage their participation because they would at least be partially compensated for their efforts, and would allow them to pursue more D-B solicitations.

We are also aware that the American Council of Engineering Companies of Hawaii (ACECH) has been working with the State Chief Procurement Officer (CPO) to reach agreement on the bill language. The Senate companion bill, SB779 SD1 takes into consideration the CPO's comments, as well as comments from the construction industry. We propose modifying HB985 HD 2 to match the senate version of the bill, SB779 SD1, and revising the effective date from July 1, 2112 to January 1, 2012. We appreciate the opportunity to provide testimony regarding HB 985, HD 2. Please do not hesitate to contact us if you have any questions regarding our testimony.

Very truly yours,

Brown and Caldwell

A handwritten signature in black ink, appearing to read "Douglas B. Lee".

Douglas B. Lee, P.E.

Vice President



March 19, 2011

**Senate Committee on Public Safety, Government Operations, and Military Affairs**  
**Hearing Date: Tuesday, March 22, 3:00 p.m., Conference Room 224**

Honorable Senators Will Espero, Chair; Michelle Kidani, Vice Chair; and Members of the Senate Committee on Public Safety, Government Operations, and Military Affairs

**Subject: HB 985 HD 2, Relating to Procurement**  
**TESTIMONY IN SUPPORT**

Dear Chair Espero, Vice Chair Kidani, and Committee Members:

**Fukunaga & Associates, Inc.** is a Hawaii-owned and managed Civil & Environmental Engineering firm operating in Hawaii since 1969. **We are in strong support of HB 985, HD2, Relating to Procurement.** The revised bill would provide for the procurement of design-build contract teams in a manner used by the Federal Government and many other jurisdictions.

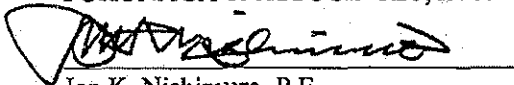
The purpose of the bill is to put in place a two-step process for procuring design-build teams. At the first stage, potential design-build teams would submit their qualifications particular to the proposed project. A selection committee would select the most qualified teams (preferably no more than three) that would then proceed to the second proposal stage. The two-step process serves to reduce industry costs in responding to requests for design-build proposals, to encourage the most qualified design-builders to participate by increasing their chances of success, and to reduce the cost to the agency of reviewing the proposals.

The bill would also provide for the granting of a stipend (conceptual design fee) to the unsuccessful short-listed teams. The design-build situation is completely different than the normal design-bid-build process, because the designers must prepare partial design documents as part of the proposal process. Preparation of a design-build proposal is an onerous task, and teams can spend more than \$1 million to prepare their proposal. Studies have shown that the providing even a nominal fee to the losing teams encourages more teams to participate. In Hawaii, many of our local A/E firms are small businesses, and many do not participate in design-build procurements because of the high cost. Providing a conceptual design fee would encourage more of our small firms to participate in design-build projects.

We are also aware that the American Council of Engineering Companies of Hawaii (ACECH) has been working with the State Chief Procurement Officer to reach agreement on the bill language. The Senate companion bill, SB779 SD1 takes into consideration the CPO's comments, as well as comments from the construction industry. We propose modifying HB985 to match the senate version of the bill, SB779 SD1, We appreciate the opportunity to provide testimony regarding this measure. Please do not hesitate to contact us if you have any questions regarding our testimony.

Very truly yours,

FUKUNAGA & ASSOCIATES, INC.



Jon K. Nishimura, P.E.  
President

FUKUNAGA & ASSOCIATES, INC.



## **COALITION OF HAWAII ENGINEERING AND ARCHITECTURAL PROFESSIONALS**

March 19, 2011

EMAILED TESTIMONY TO: [PGMTestimony@Capitol.hawaii.gov](mailto:PGMTestimony@Capitol.hawaii.gov)

**Hearing Date: Tuesday, March 22, 3:00 p.m., Conference Room 224  
Senate Committee on Public Safety, Government Operations, and Military Affairs**

Honorable Senators Will Espero, Chair; Michelle Kidani, Vice Chair; and Members of the Senate Committee on Public Safety, Government Operations, and Military Affairs

**Subject: HB 985 HD2 - Relating to Procurement**

Honorable Chair Espero, Vice Chair Kidani and Committee Members,

The Coalition of Hawaii Engineering & Architectural Professionals represents several professional Engineering and Architectural organizations including American Council of Engineering Companies Hawaii; Hawaii Chapter of the American Society of Civil Engineers; American Public Works Association Hawaii Chapter; Structural Engineering Association of Hawaii; and the Hawaii Society of Professional Engineers.

We are in **Strong Support of HB 985 HD2 - Relating to Procurement** and to provide a nationally recognized procurement process for the procurement of Design Build construction projects. *We propose that HB 985 HD2 should match the same language as SB 779 SD 2 – Relating to Procurement.*

This bill develops a two part process for the procurement of Design-Build construction. The first phase is the qualification submittal, where potential teams will submit their qualifications. The agency's selection committee will then review the qualifications and selects up to *(we recommend to limit to three)* highly qualified teams to proceed to the next phase. In the second phase, short listed teams will be allowed to compete in the costly and time consuming proposal development phase where they prepare the detailed scope of work, conceptual design, construction schedules and cost proposals for final selection.

This two-step process serves to reduce industry costs in responding to requests for design-build proposals, to encourage the most qualified design-builders to participate by increasing their chances of success, and to reduce the cost to the agency of reviewing the proposals.

We have included a requirement to allow the procurement officer to compensate the losing short-listed teams in their efforts to prepare conceptual design documents. Note: the preparation of a design-build proposal is a very costly endeavor to the Design Build teams competing to the final stage. Recent examples include Honolulu Rail first segments where DB teams have spent well over \$1 million dollars putting together very detailed proposals and conceptual designs, also the State Convention Center, and Ford Island Bridge all very costly endeavors.

**We urge you to support HB 985 HD2 - Relating to Procurement.**

Sincerely,  
Coalition of Hawaii Engineering & Architectural Professionals  
Lester H. Fukuda, P.E., FACEC

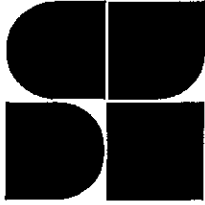
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## SHIGEMURA, LAU, SAKANASHI, HIGUCHI AND ASSOCIATES, INC.

March 21, 2011

EMAILED TESTIMONY TO: [PGMTestimony@Capitol.hawaii.gov](mailto:PGMTestimony@Capitol.hawaii.gov)

Senate Committee on Public Safety, Government Operations, and Military Affairs  
Hearing Date: Tuesday, March 22, 3:00 p.m., Conference Room 224

Howard K.C. Lau  
Craig H. Sakanashi  
Wayne K. Higuchi  
Beverly Ishii-Nakayama

Honorable Senators Will Espero, Chair; Michelle Kidani, Vice Chair; and Members of the Senate Committee on Public Safety, Government Operations, and Military Affairs

Subject: **HB 985 HD 2, Relating to Procurement  
TESTIMONY IN SUPPORT**

Dear Chair Espero, Vice Chair Kidani, and Committee Members:

Shigemura, Lau, Sakanashi, and Higuchi & Associates (SLSH), a Hawaii-owned and -operated small business engineering firm, is in strong support of **HB 985, HD2, Relating to Procurement**. The revised bill would provide for the procurement of design-build contract teams in a manner used by the Federal Government and many other jurisdictions. This bill is the companion to SB779, which this Committee passed out earlier with a SD1

The purpose of the bill is to 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 (preferably no more than three) that would then proceed to the second proposal stage. The two-step process serves to reduce industry costs in responding to requests for design-build proposals, to encourage the most qualified design-builders to participate by increasing their chances of success, and to reduce the cost to the agency of reviewing the proposals.

The bill would also provide for the granting of a stipend (conceptual design fee) to the unsuccessful short-listed teams. The design-build situation is completely different than the normal design-bid-build process, because the designers must prepare partial design documents as part of the proposal process. Preparation of a design-build proposal is an onerous task, and teams can spend more than \$1 million to prepare their proposal. Studies have shown that the providing even a nominal fee to the losing teams encourages more teams to participate. In Hawaii, many of our local Architectural and Engineering firms are small businesses, and many do not participate in design-build procurements because of the high cost of preparing the partial design document. Providing a conceptual design fee would encourage more of our small firms to participate in design-build projects.

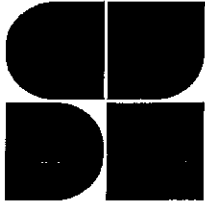
We are also aware that the American Council of Engineering Companies of Hawaii (ACECH) has been working with the State Chief Procurement Officer (CPO) to reach agreement on the bill language. The Senate companion bill, SB779 SD1 takes into consideration the CPO's comments, as well as comments from the construction industry. We propose modifying HB985 to match the senate version of the bill, SB779 SD1, We appreciate the opportunity to provide testimony regarding this measure. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,

  
Howard K.C. Lau  
President

CONSULTING STRUCTURAL ENGINEERS

1916 Young St. • 2<sup>nd</sup> Floor  
Honolulu, HI 96826  
PH (808) 942-9100  
FAX (808) 942-1899



## SHIGEMURA, LAU, SAKANASHI, HIGUCHI AND ASSOCIATES, INC.

March 21, 2011

EMAILED TESTIMONY TO: [PGMTestimony@Capitol.hawaii.gov](mailto:PGMTestimony@Capitol.hawaii.gov)

**Senate Committee on Public Safety, Government Operations, and Military Affairs**  
**Hearing Date: Tuesday, March 22, 3:00 p.m., Conference Room 224**

Howard K.C. Lau  
Craig H. Sakanashi  
Wayne K. Higuchi  
Beverly Ishii-Nakayama

Honorable Senators Will Espero, Chair; Michelle Kidani, Vice Chair; and Members of the Senate Committee on Public Safety, Government Operations, and Military Affairs

**Subject: HB 985 HD 2, Relating to Procurement**  
**TESTIMONY IN SUPPORT**

Dear Chair Espero, Vice Chair Kidani, and Committee Members:

Shigemura, Lau, Sakanashi, and Higuchi & Associates (SLSH), a Hawaii-owned and -operated small business engineering firm, is in strong support of **HB 985, HD2, Relating to Procurement**. The revised bill would provide for the procurement of design-build contract teams in a manner used by the Federal Government and many other jurisdictions. This bill is the companion to SB779, which this Committee passed out earlier with a SD1

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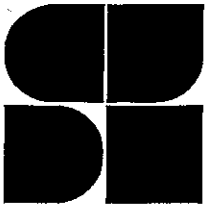
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Respectfully submitted,

Wayne K. Higuchi  
Principal

CONSULTING STRUCTURAL ENGINEERS

1916 Young St. • 2<sup>nd</sup> Floor  
Honolulu, HI 96826  
PH (808) 942-9100  
FAX (808) 942-1899



## SHIGEMURA, LAU, SAKANASHI, HIGUCHI AND ASSOCIATES, INC.

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Respectfully submitted,

Beverly Ishii-Nakayama  
Principal

CONSULTING STRUCTURAL ENGINEERS



**KAI HAWAII**  
STRUCTURAL & FORENSIC ENGINEERS

Ken K. Hayashida, P.E.  
Michael P. Hunnemann, P.E.

March 21, 2011

**Senate Committee on Public Safety, Government Operations, and Military Affairs**  
**Hearing Date: Tuesday, March 22, 3:00 p.m., Conference Room 224**

Honorable Senators Will Espero, Chair; Michelle Kidani, Vice Chair; and Members of the Senate Committee on Public Safety, Government Operations, and Military Affairs

**Subject: HB 985 HD 2, Relating to Procurement**  
**TESTIMONY IN SUPPORT**

Dear Chair Espero, Vice Chair Kidani, and Committee Members:

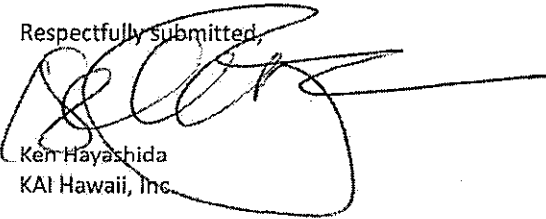
Our company strongly supports HB 985, HD2, Relating to Procurement. The revised bill would provide for the procurement of design-build contract teams in a manner used by the Federal Government and many other jurisdictions. This bill is the companion to SB779, which this Committee passed out earlier with a SD1.

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Respectfully submitted,



Ken Hayashida  
KAI Hawaii, Inc.



March 21, 2011

**Senate Committee on Public Safety, Government Operations, and Military Affairs**  
**Hearing Date: Tuesday, March 22, 3:00 p.m., Conference Room 224**

Honorable Senators Will Espero, Chair; Michelle Kidani, Vice Chair; and Members of the Senate Committee on Public Safety, Government Operations, and Military Affairs

Subject: **HB 985 HD 2, Relating to Procurement**  
**TESTIMONY IN SUPPORT**

Dear Chair Espero, Vice Chair Kidani, and Committee Members:

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We are also aware that the American Council of Engineering Companies of Hawaii (ACECH) has been working with the State Chief Procurement Officer (CPO) to reach agreement on the bill language. The Senate companion bill, SB779 SD1 takes into consideration the CPO's comments, as well as comments from the construction industry. We propose modifying HB985 to match the senate version of the bill, SB779 SD1. We appreciate the opportunity to provide testimony regarding this measure. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,

Francis T. Hino  
Vice President



**Pacific Geotechnical Engineers, Inc.**  
*Soils & Foundation Engineering Consultants*

94-417 Akoki Street  
Waipahu, Hawaii 96797  
Telephone: (808) 678-8024  
Facsimile: (808) 678-8722  
Email: pge@pacificgeotechnical.com

March 21, 2011

EMAILED TESTIMONY

**Hearing Date: Tuesday, March 22, 3:00 p.m., Conference Room 224**  
**Senate Committee on Public Safety, Government Operations, and Military Affairs**

Honorable Senators Will Espero, Chair, Michelle Kidani, Vice Chair, and Members of the Senate Committee on Public Safety, Government Operations, and Military Affairs

Subject: **HB 985, H.D. 2 Relating to Procurement**  
**TESTIMONY IN SUPPORT**

Dear Chair Espero, Vice Chair Kidani, and Committee Members,

Pacific Geotechnical Engineers, Inc. strongly **supports HB 985, H.D. 2 Relating to Procurement**. This bill would put in place a two-step process for procuring design-build teams similar to what is used by the Federal Government and many other jurisdictions. 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 (preferably not more than three) 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.

This two-step process will encourage highly qualified design-builders to participate in requests for design-build proposals by increasing their chances of success and reducing industry costs. 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 985 also provides for the granting of a stipend (conceptual design fee) to the unsuccessful 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 are also aware that the American Council of Engineering Companies of Hawaii (ACECH) has been working with the State Chief Procurement Officer (CPO) to reach agreement on the bill language. The Senate companion bill, SB779 SD1 takes into consideration the CPO's comments, as well as comments from the construction industry. We propose modifying HB985 to match the senate version of the bill, SB779 SD1. We appreciate the opportunity to provide testimony in **support of HB 985, H.D. 2**. Please do not hesitate to contact me at (808) 678-8024 if you have any questions regarding this testimony.

Respectfully submitted,

PACIFIC GEOTECHNICAL  
ENGINEERS, INC.

Glen Y.F. Lau, P.E.  
President



# AMERICAN INSTITUTE OF ARCHITECTS

PGM  
3.22.11  
3:00 PM

March 22, 2011

Honorable Will Espero, Chair  
Senate Committee on Public Safety, government Operations & Military Affairs

Re: **House Bill 985 HD 2**  
**Relating to Procurement**

Dear Chair Espero and Members of the Committee,

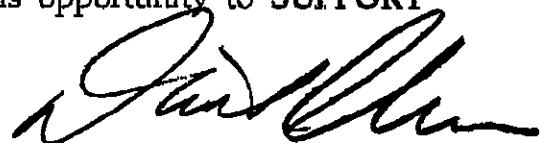
My name is Daniel Chun, Government Affairs Chair of the American Institute of Architects (AIA) Hawaii State Council. **AIA SUPPORTS HB 985 HD 2.**

Allow me to offer a perspective as the owner of a Hawaii-based small business. I have over 30 years of practice experience as an architect. I have managed my small business in Hawaii for nearly the same amount of time. I have direct past experience in state design-build procurement being a team member for the following requests for proposals: University of Hawaii Stan Sheriff Center, the Hawaii Convention Center, the Kapolei State Office Building, the State Judiciary Public Information Center.

I have "won" only one of these, which is considered a good average. I have "lost" three of these competitions with the resulting increase in my small business overhead operating costs. House Bill 985 remedies some of the more onerous aspects of current design-build by allowing for payment to unsuccessful offerors.

Payment to unsuccessful offerors promotes continuing competition for design-build projects. The currently typical practice of some agencies for no payment will ultimately limit offerors to an ever-decreasing number of contractors/design professionals who can afford the high business overhead cost of losing a competition.

The state of Hawaii will receive the benefit of multiple design solutions to choose from. The state gets to "test drive" several designs before having to buy one. This choice has substantial value to the state and the state needs to be willing to pay for the choice. Thank you for this opportunity to **SUPPORT** House Bill 985 HD 2.





March 21, 2011

Senate Committee on Public Safety, Government Operations, and Military Affairs  
Hearing Date: Tuesday, March 22, 3:00 p.m.

Subject: **HB 985, Relating to Procurement**  
**TESTIMONY IN SUPPORT**

Dear Chair and Committee Members:

Nordic PCL Construction, Inc. is pleased to offer our support of cross-over **HB 985, Relating to Procurement**. This bill is aligned with established industry best practices and would provide for the procurement of design-build contract teams in a manner used by the Federal Government and many other jurisdictions.

HB 985 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 that would then proceed to the second proposal stage. The two-step process serves to reduce industry costs in responding to requests for design-build proposals, to encourage the most qualified design-builders to participate by increasing their chances of success, and to reduce the cost to the agency of reviewing the proposals. The qualified 'short list' is typically no more than 3 bidders; we respectfully submit that the language of SB779 should be adopted for this House Bill.

HB 985 also allows the procurement officer the option to pay a stipend to the unsuccessful short-listed teams. Preparation of a design-build proposal can be an onerous task, and teams can spend more than \$1 million on large projects to prepare the conceptual design and proposal. Studies have shown that providing even a nominal fee to the unsuccessful teams encourages more teams to compete. In Hawaii, many of our local engineering design firms are small businesses, and we feel that providing a conceptual design fee would encourage their participation because they are more comfortable with their chances of success.

We appreciate the opportunity to provide testimony in support of HB 985 and encourage its enactment. Please do not hesitate to contact us if you have any questions regarding our testimony.

Sincerely,  
Nordic PCL Construction, Inc.

Alan R. Levy  
Preconstruction Manager  
arlevy@nordicpcl.com

NORDIC PCL CONSTRUCTION, INC.  
LICENSE #ABC-17

1099 ALAKEA STREET, SUITE 1560, HONOLULU HI 96813 ♦ TELEPHONE (808)541-9101 ♦ FAX (808)541-9108  
NORDIC PCL IS AN AFFIRMATIVE ACTION, EQUAL OPPORTUNITY EMPLOYER M/F/D/V

# Design Build Institute of America Western Pacific Region



5855 E. Naples Plaza, Suite 301, Long Beach, CA 90803 Phone 562-434-0516 Fax 562-434-9378 [www.dbiawp.org](http://www.dbiawp.org)

March 21, 2011

**Senate Committee on Public Safety, Government Operations, and Military Affairs**  
**Hearing Date: Tuesday, March 22, 3:00 p.m.**

**Subject: HB 985, Relating to Procurement**  
**TESTIMONY IN SUPPORT**

Dear Chair and Committee Members:

The Design-Build Institute of America (DBIA) is a national organization of design and construction professionals who have joined forces to be the industry's preeminent resource for leadership, education, objective expertise, and best practices for the successful integrated delivery of capital projects. DBIA promotes the value of design-build project delivery and teaches the effective integration of design and construction services to ensure success for owners and design and construction practitioners.

The Design-Build Institute of America, Western Pacific Region, and the Hawaii Chapter offer our support of **HB 985, Relating to Procurement**. This bill is aligned with our established best practices and would provide for the procurement of design-build contract teams in a manner used by the Federal Government and many other jurisdictions.

HB 985 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 that would then proceed to the second proposal stage. The two-step process serves to reduce industry costs in responding to requests for design-build proposals, to encourage the most qualified design-builders to participate by increasing their chances of success, and to reduce the cost to the agency of reviewing the proposals. The qualified 'short list' is typically no more than 3 bidders; we respectfully submit that the language of SB779 should be adopted for this House Bill.

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We appreciate the opportunity to provide testimony in support of HB 985 and encourage its enactment. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,

Handwritten signature of Alan R. Levy in cursive.

Alan R. Levy  
Chair, Hawaii Chapter  
Board of Directors  
DBIA-Western Pacific Region

Handwritten signature of Jon C. Wald in cursive.

Jon C. Wald  
Chair, Legislative Committee  
Board of Directors  
DBIA-Western Pacific Region

# DBIA POSITION STATEMENT

## USE OF STIPENDS

### Background

A stipend is an amount paid by the owner to those shortlisted responsive proposers who are unsuccessful in obtaining contract award. Many owners use stipends as an integral part of their design-build procurement process, based on the fact that stipends:

- Enhance competition by generating market interest in the project from the most highly qualified design-build teams;
- Help defray the cost of proposal development incurred by the design-build teams;
- Signal the owner's serious intention to carry the project forward; and
- Encourage proposers to expend the time, money and resources to provide more creative and comprehensive solutions.

### Position

The cost of preparing proposals for best-value design-build competitions can constitute a considerable burden upon the proposers. The stipend helps cover a portion of the design-build proposal costs and can provide an effective financial incentive that increases competition. While many firms will submit proposals in the absence of a stipend, some qualified firms may evaluate the proposal process skeptically, particularly when the RFP contains substantial submittal requirements that necessitate the expenditure of significant monies by the design-build proposers. In view of all these factors, DBIA believes that payment of a stipend is a best practice on most design-build projects.

While DBIA endorses the use of stipends, DBIA does not view the awarding of a stipend as a justification for making excessive demands upon the proposers. A stipend rarely covers the cost of proposal preparation, which can require a substantial investment on the part of the proposers. When the RFP requires significant preliminary design work and submittals, for example, the difference between the stipend and the cost of creating the proposal may become so substantial that the stipend is relatively meaningless.

The amount of the stipend offered by owners should reflect a variety of factors. Industry surveys show stipends awarded to each responsive proposer commonly range between 0.01 percent and 0.25 percent of the project budget, although stipends of greater value have been



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## USE OF STIPENDS

distributed. DBIA believes that an owner should determine stipend amount based on the particular needs and complexities of a project, considering what is required to generate sufficient market interest from the most highly qualified design-build teams and the level of effort involved in proposal preparation.

DBIA maintains that public owners receive substantial value through the proposal process and that public interests are well served when an owner offers a stipend. In the Federal sector, OMB Circular No. A-11 (2006) encourages the use of stipends for the reasons described above. Other public owners have taken the position that they are precluded by applicable law from giving a stipend, based on arguments of the misuse or imprudent use of public funds. While this owner decision will be governed by applicable procurement laws, DBIA suggests that the policies reflected in the OMB Circular be considered by procurement authorities.

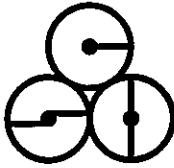
Some owners have conditioned their provision of a stipend upon a requirement that the proposer grant the owner the right to use the ideas in their technical proposals. However, DBIA does not believe that the payment of the stipend should be tied to ownership rights to the proposal documents. Nonetheless, the availability of a stipend and the terms governing its use should be identified in the RFQ and RFP.

In summary, DBIA considers the use of stipends one means to encourage participation in the proposal process. DBIA also believes that owners will be well served by looking beyond stipends and carefully examining the totality of their process for soliciting proposals. In this regard, DBIA recommends that owners incorporate all DBIA best practices regarding the source selection process, as contained in the DBIA Position Statement on Best Value Selection. These measures will not only reduce the burden upon proposers, but will also meet the legitimate needs and interests of the owner by encouraging active competition among quality design-build teams for the project award.

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This document should not be understood to offer legal or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.

Design-Build Institute of America, 1100 H Street, NW, Suite 500, Washington, DC 20005 – (202) 682-0110.



**CONSULTING  
STRUCTURAL HAWAII, INC.**

931 Husten Street, Suite 200  
Honolulu, Hawaii 96826  
Phone: (808) 945-0198 • Fax: (808) 944-1177  
e-mail: [csh@consultingstructuralhawaii.com](mailto:csh@consultingstructuralhawaii.com)

March 21, 2011

**Senate Committee on Public Safety, Government Operations, and Military Affairs  
Hearing Date: Tuesday, March 22, 3:00 p.m., Conference Room 224**

Honorable Senators Will Espero, Chair; Michelle Kidani, Vice Chair; and Members of the Senate Committee on Public Safety, Government Operations, and Military Affairs

Subject: **HB 985 HD 2, Relating to Procurement  
TESTIMONY IN SUPPORT**

Dear Chair Espero, Vice Chair Kidani, and Committee Members:

**Consulting Structural Hawaii, Inc. strongly supports HB 985, HD2, Relating to Procurement.** The revised bill would provide for the procurement of design-build contract teams in a manner used by the Federal Government and many other jurisdictions. This bill is the companion to SB779, which this Committee passed out earlier with a SD1

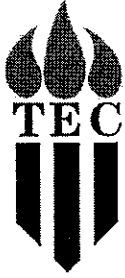
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Consulting Structural Hawaii, Inc. has become very selective and we are often very reluctant on being on a contractor's design-build team since the percentage is very small on being on the winning team. We will definitely be more willing to provide the effort to being on a contractor's design-build team if conceptual design fees are provided.

We are also aware that the American Council of Engineering Companies of Hawaii (ACECH) has been working with the State Chief Procurement Officer (CPO) to reach agreement on the bill language. The Senate companion bill, SB779 SD1 takes into consideration the CPO's comments, as well as comments from the construction industry. We propose modifying HB985 to match the senate version of the bill, SB779 SD1. We appreciate the opportunity to provide testimony regarding this measure. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,  
Roy K. Yamashiro, P.E., Principal  
Consulting Structural Hawaii, Inc.



## THERMAL ENGINEERING CORPORATION

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March 21, 2011

Senate Committee on Public Safety, Government Operations, and Military Affairs  
Hearing Date: Tuesday, March 22, 3:00 p.m., Conference Room 224

Honorable Senators Will Espero, Chair; Michelle Kidani, Vice Chair; and Members of the Senate Committee on Public Safety, Government Operations, and Military Affairs

Subject: **HB 985 HD 2, Relating to Procurement**  
**TESTIMONY IN SUPPORT**

Dear Chair Espero, Vice Chair Kidani, and Committee Members:

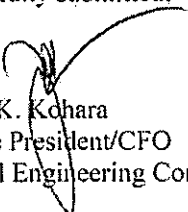
**Our company strongly supports HB 985, HD2, Relating to Procurement.** The revised bill would provide for the procurement of design-build contract teams in a manner used by the Federal Government and many other jurisdictions. This bill is the companion to SB779, which this Committee passed out earlier with a SD1

The purpose of the bill is to 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 (preferably no more than three) that would then proceed to the second proposal stage. The two-step process serves to reduce industry costs in responding to requests for design-build proposals, to encourage the most qualified design-builders to participate by increasing their chances of success, and to reduce the cost to the agency of reviewing the proposals.

The bill would also provide for the granting of a stipend (conceptual design fee) to the unsuccessful short-listed teams. The design-build situation is completely different than the normal design-bid-build process, because the designers must prepare partial design documents as part of the proposal process. Preparation of a design-build proposal is an onerous task, and teams can spend more than \$1 million to prepare their proposal. Studies have shown that the providing even a nominal fee to the losing teams encourages more teams to participate. In Hawaii, many of our local Architectural and Engineering firms are small businesses, and many do not participate in design-build procurements because of the high cost of preparing the partial design document. Providing a conceptual design fee would encourage more of our small firms to participate in design-build projects.

We are also aware that the American Council of Engineering Companies of Hawaii (ACECH) has been working with the State Chief Procurement Officer (CPO) to reach agreement on the bill language. The Senate companion bill, SB779 SD1 takes into consideration the CPO's comments, as well as comments from the construction industry. We propose modifying HB985 to match the senate version of the bill, SB779 SD1. We appreciate the opportunity to provide testimony regarding this measure. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,

  
Jeffrey K. Kohara  
Sr. Vice President/CFO  
Thermal Engineering Corporation

**Kennedy/Jenks Consultants**  
98-1268 Kaahumanu Street, Suite 204  
Pearl City, Hawaii 96782  
P: 808.488.0477 F: 808.488.3776

March 21, 2011

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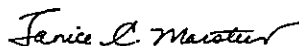
**Our company strongly supports HB 985, HD 2, Relating to Procurement.** The revised bill would provide for the procurement of design-build contract teams in a manner used by the Federal Government and many other jurisdictions.

The purpose of the bill is to 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 (up to five) that would then proceed to the second proposal stage. The two-step process serves to reduce industry costs in responding to requests for design-build proposals, to encourage the most qualified design-builders to participate by increasing their chances of success, and to reduce the cost to the agency of reviewing the proposals.

The bill would also provide for the granting of a conceptual design fee to the losing short-listed teams. The design-build situation is completely different than the normal design-bid-build process, because the designers must prepare partial design documents as part of the proposal process. Preparation of a design-build proposal is an onerous task, and teams can spend more than \$1 million to prepare their proposal. Studies have shown that the providing even a nominal fee to the losing teams encourages more teams to participate. In Hawaii, many of our local A/E firms are small businesses, and many do not participate in design-build procurements because of the high cost. Providing a conceptual design fee would encourage more of our small firms to participate in design-build projects.

We appreciate the opportunity to provide testimony regarding this measure. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,  
Kennedy/Jenks Consultants



Janice Marsters, Ph.D., LEED AP  
Senior Environmental Engineer





**RALPH S. INOUE CO LTD**  
**GENERAL CONTRACTOR**

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License No. ABC-457  
Founded in 1962

March 22, 2011

TO: THE HONORABLE WILL ESPERO, CHAIR AND MEMBERS OF THE SENATE  
COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND  
MILITARY AFFAIRS  
SUBJECT: HB985, HD2 RELATING TO PROCUREMENT.

NOTICE OF HEARING

DATE/TIME: Tuesday, March 22, 2011, 3:00 PM  
PLACE: Conference Room 224

Dear Chair Espero and Members of the Committee:

My name is Lance Inouye, President of Ralph S. Inouye Co., Ltd. (RSI), a Hawaii General Contractor since 1962 and member of the General Contractors Association of Hawaii (GCA). RSI supports passage of HB985, HD2 Relating to Procurement, but suggests amendments as noted in the attached. Please note the attached amendments are to the companion Senate bill SB779 SD2 that is nearly identical to HB985 HD2 and therefore may be similarly applied herein.

HB985, HD2 provides a design build procurement process for construction modeled after the 2000 Model procurement Code of the American Bar Association. The proposed bill will give State procurement officers essential minimum requirements to follow when using the design build process for procuring construction services that include:

1. Delineating a two-step design build process;
2. Selecting up to only 3 offerors for step two, the most costly part of competing in the design build process; and
3. Providing for a conceptual design fee to help defray costs of the step two proposals to encourage quality proposals.

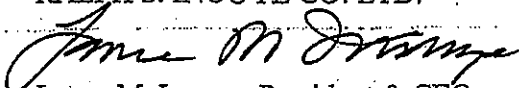
The attached suggested amendments to HD2 are intended to put the design build process in a subsection of HRS §103D-303 that does not preclude using the rest of the section for other innovative procurement processes.

RSI believes that the implementation of this two step procedure for the procurement of design build construction projects as proposed in HB985, HD2 will result in enhanced proposal quality and provide the State with the most innovative and cost effective proposals.

RSI recommends that the Committee pass HB985, HD2 and suggests incorporating the attached amendments. Thank you for the opportunity to testify on this matter.

Sincerely,

RALPH S. INOUE CO. LTD.

  
Lance M. Inouye, President & CEO

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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 [~~e~~  
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, 2050.

*Insert "(i) . . . ." here*



Report Title:  
Procurement; Design-build Contracts

Description:  
Establishes discretionary request for competitive sealed proposal procedures using the design-build process where not more than three offerors selected on their qualifications submit proposals. 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 7/1/2050. (SD2)

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



Proposed Design Build Insert into SB779 and HB985  
Dated: 03-20-2011

(i) Design-Build Procurement - Construction projects may be procured using the design-build method that follows the minimum requirements of the two-step process described below and includes the requirements of subsections (a) through (h) not in conflict with this subsection:

- (A) In step one, a Request for Qualifications is issued in advance of the Request for Proposals to initially pre-qualify offerors, selecting a short list of up to three (3) responsible offerors based on qualification proposals submitted among them; provided that the number of proposals that will be short listed is stated in the Request for Qualifications and prompt public notice shall be given to all offerors as to which proposals have been short listed.
- (B) In step two, selected offerors from step one will be issued a Request for Proposals that include design requirements and that solicit proposal development documents with evaluation factors clearly delineated in the Request for Proposals; provided that non-selected offerors in step two who submit technically responsive proposals may be paid a conceptual design fee; provided further that the amount of such conceptual design fee and the terms under which said fee will be paid are stated in the Request for Qualifications and the Request for Proposals.



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Consulting Engineers

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*Kurt Schindler*  
Executive Vice President