

**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

P.O. Box 119  
Honolulu, Hawaii 96810-0119  
Tel: (808) 587-4700 Fax: (808) 587-4703  
<http://hawaii.gov/spo>

**TESTIMONY  
OF  
AARON S. FUJIOKA  
ADMINISTRATOR  
STATE PROCUREMENT OFFICE****TO THE  
HOUSE COMMITTEE  
ON  
ECONOMIC REVITALIZATION & BUSINESS**

February 08, 2011

8:00 AM

HB 985

**RELATING TO PROCUREMENT.**

Chair McKelvey, Vice-Chair Choy, and committee members, thank you for the opportunity to testify on HB 985. 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. If the committee believes this bill is in the best interest of the State, then SPO requests that the implementation date for this bill be delayed to allow for notice to affected departments and agencies and development of interim rules to implement this requirement.

Thank you.

## ATTACHMENT

**Justification:** Add new definition to §103D-104 for 'design-build' as provided by the *2000 Model Procurement Code for State and Local Governments*, issued by the American Bar Association.

**§103D-104 Definitions.** "Design-build" means a project delivery method in which the procurement officer enters into a single contract for design and construction of an infrastructure facility.

**Justification:** Amend §103D-303 by replacing the word "negotiation" with "evaluation"; delete unnecessary language for rulemaking as §103D-211 on procurement rules already provides for this requirement; clarify procurement officer responsibility; and add process for design-build as provided by the *2000 Model Procurement Code for State and Local Governments*, issued by the American Bar Association.

**"§103D-303 Competitive sealed proposals.** (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 are either not practicable or not advantageous to the State to procure by competitive sealed bidding. ~~[Competitive sealed proposals may also be [utilized] used 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, and for construction projects, the procurement officer may determine to be procured using design-build method; provided that:

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

(A) Issue Request for Proposals to initially request prequalification of offerors to select a short list of

**ATTACHMENT**

responsible offerors prior to submittal of proposals or discussions and evaluations pursuant to subsection (f), provided 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

(B) Pay stipends to unsuccessful offerors, provided that the amount of the stipend and the terms under which stipends will be paid are stated in the Request for Proposals.

(c) Notice of the request for proposals shall be given in the same manner as provided in section 103D-302(c).

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

(e) The request for proposals shall state the relative importance of price and other evaluation factors.

(f) Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being 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

## ATTACHMENT

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 the debriefing is completed.

~~(i) At the discretion of the head of the purchasing agency, construction projects may be procured using the design build process of combining design and construction into a single contract, provided that:~~

**ATTACHMENT**

- ~~(1) A design build offeror shall be a contractor licensed under chapter 444;~~
- ~~(2) Submission of proposals shall entail the two-phased approach described as follows, or as specified in the solicitation in accordance with subsection (c):~~
  - ~~(A) Each interested offeror shall submit a statement of qualifications. This phase shall be considered the request for qualifications phase;~~
  - ~~(B) The chief procurement officer shall designate an evaluation committee composed of qualified, impartial, independent members who shall evaluate each offeror's statement of qualifications and develop a list of no more than five offerors who are deemed to be the most highly qualified, based upon the following criteria:
    - ~~(i) Experience and qualifications of the offeror's team relevant to the project type;~~
    - ~~(ii) Past performance on projects of similar scope for public agencies or private industry;~~
    - ~~(iii) Capacity to accomplish the work in the required time; and~~
    - ~~(iv) Location of the principal office and familiarity with the locality of the project;~~~~
- ~~provided that the names of the members of the evaluation committee shall be placed into the contract file; and~~
- ~~(C) Offerors selected by the committee may submit proposals to be considered for award of the contract. This phase shall be considered the request for proposal phase;~~
- ~~(3) At the onset of the request for proposal phase, the purchasing agency shall determine and include a statement of the maximum number of offerors who will be selected to submit proposals, and the amount of the conceptual design fee that will be provided to offerors who submit a technically responsive offer;~~
- ~~(4) If the procurement officer cancels the contract, responsive offerors, including the selected design build offeror, shall receive the conceptual design fee; and~~
- ~~(5) The conceptual design fee shall be paid within ninety days from the award of the contract or from the day of the decision to cancel the contract."~~

SECTION 5. This Act shall take effect on ~~July 1, 2011~~ January 1, 2012.



# ENGINEERING CONCEPTS, INC.

Consulting Engineers

## LATE TESTIMONY

February 6, 2011

EMAILED TESTIMONY TO: ERBtestimony@Capitol.hawaii.gov

**House Committee on Economic Revitalization and Business**  
**Hearing Date: Tuesday, February 8, 8:00 a.m., Conference Room 312**

Honorable Representatives Angus L.K. McKelvey, Chair; Isaac W. Choy, Vice Chair; and Members of the House Committee on Economic Revitalization and Business

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

Dear Chair McKelvey, Vice Chair Choy, and Committee Members,

**Engineering Concepts, Inc.** is a Hawaii-owned and managed Civil & Environmental Engineering firm operating in Hawaii since 1986. **We are in strong support of HB 985, Relating to Procurement.** HB 985 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 (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.

HB 985 also provides for the granting of a conceptual design fee to the losing short-listed teams. 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 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 we feel that 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 HB 985. Please do not hesitate to contact us if you have any questions regarding our testimony.

Very truly yours,

Kenneth Ishizaki  
Executive Vice President



**Okahara & Associates, Inc.**

ENGINEERING CONSULTANTS

Via Email: [ERBtestimony@Capitol.hawaii.gov](mailto:ERBtestimony@Capitol.hawaii.gov)

February 7, 2011

**House Committee on Economic Revitalization and Business**  
**Hearing Date: Tuesday, February 8, 8:00 a.m., Conference Room 312**

Honorable Representatives Angus L.K. McKelvey, Chair; Isaac W. Choy, Vice Chair; and  
Members of the House Committee on Economic Revitalization and Business

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

Dear Chair McKelvey, Vice Chair Choy, and Committee Members,

Our company strongly supports **SB 985, Relating to Procurement**. HB 985 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 (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.

HB 985 also provides for the granting of a conceptual design fee to the losing short-listed teams. 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 we feel that 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 HB 985. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,

Donald Okahara, P.E.  
President



## **LATE TESTIMONY**

February 6, 2011

**House Committee on Economic Revitalization and Business**  
**Hearing Date: Tuesday, February 8, 8:00 a.m., Conference Room 312**

Honorable Representatives Angus L.K. McKelvey, Chair; Isaac W. Choy, Vice Chair; and Members of the House Committee on Economic Revitalization and Business

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

Dear Chair McKelvey, Vice Chair Choy, and Committee Members,

Our company strongly **supports HB 985, Relating to Procurement**. We think HB 985 provides for the procurement of design-build contract teams in a manner fair to all.

HB 985 would put in place a two-step process for procuring design-build teams. The first stage would be based on qualifications and a second phase based on preparation of a design-build document. This two step process encourages the most qualified teams to participate knowing they are competing against a smaller population. This process also reduces agency review process as well. 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.

HB 985 also provides for the granting of a conceptual design fee to the losing short-listed teams. Studies have shown that 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 we feel that providing a conceptual design fee would encourage more of our small firms to participate in design-build projects. The more participation encourages a better project result.

We appreciate the opportunity to provide testimony regarding HB 985. Call me at 808-941-0577 if you have any questions about this letter.

Respectfully submitted,

Ronald N.S. Ho  
President





## LATE TESTIMONY

THE LIMTIACO CONSULTING GROUP  
CIVIL ENGINEERING AND ENVIRONMENTAL CONSULTANTS

February 7, 2011

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

**House Committee on Economic Revitalization and Business**  
**Hearing Date: Tuesday, February 8, 8:00 a.m., Conference Room 312**

Honorable Representatives Angus L.K. McKelvey, Chair; Isaac W. Choy, Vice Chair; and Members of the House Committee on Economic Revitalization and Business

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

Dear Chair McKelvey, Vice Chair Choy, and Committee Members,

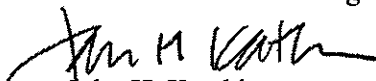
The Limtiaco Consulting Group, a small and local business, **strongly supports HB 985, Relating to Procurement**. HB 985 will promote fair and engaging design-build procurement procedures consistent with agencies highly experienced with design-build projects, such as the federal government.

HB 985 promotes a two-step process for procuring design-build teams. Design-build teams will submit their qualifications particular to the proposed project in the first phase. An agency-developed selection committee will then select a short list of the most qualified teams (typically three, but may be up to five) for the second phase where conceptual designs and fee proposals are prepared. The selection committee then selects the highest ranked team. A nominal fee (for conceptual design services) would be awarded to the short listed teams not awarded the contract.

Without HB 985, all design-build teams are required to participate all the way through the conceptual and fee proposal phase. This effort is significant, expensive, and too financially risky for most engineering companies, particularly our small and local businesses. As a result, highly-qualified firms will not be able to afford to participate in applicable design-build projects. This will have negative impacts on infrastructure and facility projects. In the end, HB 985 will end up saving the State of Hawaii money and will result in better designs due to better competition.

We appreciate the opportunity to provide testimony regarding HB 985. Please do not hesitate to contact us if you have any questions regarding our testimony.

Best always,  
*The Limtiaco Consulting Group, Inc.*

  
John H. Katahira  
President