
A BILL FOR AN ACT

RELATING TO PUBLIC-PRIVATE PARTNERSHIPS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Hawaii is faced with limited if not declining
2 government funding. This trend is expected to continue, making
3 it more important to partner with the private sector and
4 leverage limited governmental resources.

5 A public-private partnership is a contractual agreement
6 between a public agency and a private entity that allows for a
7 greater risk transfer to the private sector in the delivery and
8 financing of a public project in a manner that creates greater
9 value for the public than traditional delivery methods. In a
10 public-private partnership project, the public agency retains
11 ownership and substantial control but transfers responsibility
12 to the private partner under a single contract, which often is a
13 long-term contract involving lifecycle cost risk. The focus of
14 a public-private partnership is to provide the best value and
15 performance in its delivery of assets and services for the
16 benefit of the general public.



1 Public-private partnership projects will help the state and
2 local governments in undertaking certain capital improvement
3 projects in a more cost-effective and efficient manner by
4 allowing more innovative project delivery methods.

5 SECTION 2. Chapter 103, Hawaii Revised Statutes, is
6 amended by adding a new part to be appropriately designated and
7 to read as follows:

8 "PART . OFFICE OF PUBLIC-PRIVATE PARTNERSHIP

9 §103- Office of public-private partnership; established;
10 state public-private partnership coordinator. There is
11 established within the department of accounting and general
12 services an office of public-private partnership to support
13 state and county agencies in the use of best practices in
14 contracting for public-private partnership projects to deliver
15 and finance public projects at a lower lifecycle cost and more
16 diversified risk than traditional delivery processes. The
17 comptroller may appoint a public-private partnership coordinator
18 who shall be exempted from chapter 76, to administer the office.

19 §103- Duties. The office of public-private partnership
20 shall:



- 1 (1) Create a strategic plan for the provision of advisory
2 services to state and county agencies that includes:
- 3 (A) Objectives and goals for the office of public-
4 private partnership and criteria to measure the
5 objectives and goals;
- 6 (B) A website for maintaining the status of public-
7 private projects and best practice resources that
8 meet the office of public-private partnership's
9 objectives and goals;
- 10 (C) A framework for retention of qualified legal,
11 financial, and technical advisors that can assist
12 in the delivery of services contemplated by this
13 part; and
- 14 (D) The necessary funding to establish and operate
15 the office of public-private partnership and fee
16 structures for advisory services to maintain the
17 office of public-private partnership;
- 18 (2) Coordinate collaboration among state and county
19 agencies to analyze the value of potential public-
20 private partnership delivery over other delivery



1 methods permitted in chapter 103D and other needs and
2 goals of the state and county agencies;

3 (3) Provide to the purchasing agency best practice
4 processes for analysis of and contracting for public-
5 private partnerships, including modeling the potential
6 economic benefits and financial outcomes and contract
7 terms and conditions that will achieve those economic
8 benefits and financial outcomes;

9 (4) Provide to the purchasing agency best practice
10 processes for resolving contract disputes that may
11 arise in public-private partnerships, including
12 alternative dispute resolution and mediation;

13 (5) Create and maintain an analysis report of the value of
14 public-private partnership delivery over traditional
15 delivery for each public-private partnership project
16 that shall include:

- 17 (A) Proposed economic benefits;
18 (B) Potential financial outcomes;
19 (C) Contract terms and conditions; and
20 (D) Social benefits;



1 (6) Develop, analyze, and implement plans for future
2 public-private partnership projects, including
3 objectives and criteria to measure the accomplishment
4 of objectives, programs through which the objectives
5 are to be attained, and financial requirements for
6 public resources based on the needs and goals of the
7 State;

8 (7) Assist state and county agencies, and their respective
9 purchasing agencies, that have an interest in public-
10 private partnership projects with the legal authority
11 to coordinate activities that involve cross-agency
12 responsibilities and encourage the timely and
13 effective implementation and completion of project
14 milestones and objectives among multiple governmental
15 agencies;

16 (8) Develop educational and advisory programs that enhance
17 the public-private partnership procurement process to
18 continuously encourage best practice procurement of
19 public-private partnership projects that will result
20 in improved infrastructure and government services in
21 the State;



- 1 (9) Assist state and county agencies in formulating
2 specific program and procurement documents to solicit
3 public-private partnerships;
- 4 (10) Undertake the program established in section 26-6
5 relating to centralized engineering and office leasing
6 services, to facilitate facility agreements between
7 the State and private investors for the sale of
8 facilities including operation and maintenance of
9 public buildings; and
- 10 (11) Establish requirements for public entities intending
11 to conduct a request for information, pre-
12 qualification, or solicitation of public-private
13 partnerships using the public-private partnership
14 procurement process to notify the office of public
15 private partnership and department of accounting and
16 general services to ensure appropriate application of
17 the provisions of this part.

18 §103- **Annual report.** The department of accounting and
19 general services, in coordination with the office of public-
20 private partnership, shall submit a report to the legislature no



1 later than twenty days prior to the convening of each regular
2 session, that shall include but not be limited to:

3 (1) The process developed by the office of public-private
4 partnership to support state and county agencies in
5 the use of best practices in contracting for public-
6 private partnerships;

7 (2) A detailed description of any public-private
8 partnerships entered into, including a cost-benefit
9 analysis of the public-private partnership in
10 comparison to the traditional means of financing and
11 delivering public contracts; and

12 (3) A detailed listing of any effects the public-private
13 partnership had on state or county agencies involved
14 in the public-private partnership, including fiscal
15 and personnel impacts."

16 SECTION 3. Section 103D-104, Hawaii Revised Statutes, is
17 amended by adding three new definitions to be appropriately
18 inserted and to read as follows:

19 "Independent peer reviewer services" means additional
20 professional services provided to the purchasing agency in
21 public-private partnership procurements to confirm that the key



1 elements of the professional engineering and architectural
2 design provided by the contractor conform to the applicable
3 standard of care.

4 "Infrastructure facility" means a building, a structure, or
5 networks of buildings, structures, pipes, controls, and
6 equipment that provide transportation, utilities, public
7 education, including government office buildings; public
8 schools; courthouses; public hospitals; water treatment plants,
9 distribution systems, and pumping stations; wastewater treatment
10 plants, collection systems, and pumping stations; solid waste
11 disposal plants, incinerators, landfills, and related
12 facilities; public roads and streets; highways; public parking
13 facilities; public transportation systems, terminals, and
14 rolling stock; and rail, air, and water port structures,
15 terminals, and equipment.

16 "Public-private partnership" means a project delivery
17 method in which the purchasing agency enters into a single
18 contract for any combination of financing, maintenance, or
19 operation in addition to design-build of an infrastructure
20 facility over a contractually defined period."



SECTION 4. Section 103D-303, Hawaii Revised Statutes, is amended to read as follows:

"§103D-303 Competitive sealed proposals. (a) Competitive sealed proposals may be used to procure goods, services, or construction that are either not practicable or not advantageous to the State to procure by competitive sealed bidding.

(b) Proposals shall be solicited through a 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 process of evaluation. A register of proposals shall be prepared 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 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



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

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

13 (h) In cases of awards made under this section, non-
14 selected offerors may submit a written request for debriefing to
15 the procurement officer within three working days after the
16 posting of the award of the contract. Thereafter, the
17 procurement officer shall provide the non-selected offeror a
18 prompt debriefing. Any protest by the non-selected offeror
19 pursuant to section 103D-701 following debriefing shall be filed
20 in writing with the procurement officer within five working days
21 after the date upon which the debriefing is completed.



1 (i) In addition to any other provisions of this section,
2 construction projects may be solicited through a request for
3 proposals to use any combination of the design-build [method,]
4 or public-private partnership delivery methods; provided that:

5 (1) A request for proposals is issued to prequalify
6 offerors to select a short list of no more than three
7 responsible offerors, prior to the submittal of
8 proposals; provided that the number of offerors to be
9 selected for the short list shall be stated in the
10 request for proposals and prompt notice is given to
11 all offerors as to which offerors have been short-
12 listed;

13 (2) A conceptual design fee may be paid to non-selected
14 offerors that submit a technically responsive
15 proposal; provided that the cost of the entire project
16 is greater than \$1,000,000; [and]

17 (3) The criteria for pre-qualification of offerors, design
18 requirements, development documents, proposal
19 evaluation criteria, terms of the payment of a
20 conceptual design fee, or any other pertinent



1 information shall be stated in the request for
2 proposals [—]; and

3 (4) Public-private partnership request for proposals
4 shall:

5 (A) State the relative importance of:

6 (i) Demonstrated compliance with the design
7 requirements;

8 (ii) Offeror qualifications;

9 (iii) Financial capacity;

10 (iv) Project schedule;

11 (v) Price or lifecycle price; and

12 (vi) Other factors, if any;

13 (B) Require each offeror, for a project:

14 (i) With a contract price estimated to exceed
15 \$10,000,000;

16 (ii) With a contract period of operations and
17 maintenance of at least ten years; or

18 (iii) In other circumstances identified by the
19 chief procurement officer by rule,

20 to include and identify qualified and competent
21 independent peer reviewer services, which shall



1 be an additional evaluation factor in the award
2 of the contract; and

3 (C) Achieve initial approval from the governor, in
4 the case of a state project, or the mayor, in the
5 case of a county project, of a recommendation
6 from the head of the purchasing agency to proceed
7 with a public-private partnership.

8 (j) In addition to any other provisions of this section, a
9 contract for delivery of a construction project procured using a
10 public-private partnership method:

11 (1) Shall require, if an operational phase is part of the
12 project delivery, the use of public worker union
13 positions customarily and historically used for such
14 operation; and

15 (2) Shall not be used for the design, maintenance, or
16 operation of community correctional centers, high
17 security correctional facilities, or youth
18 correctional facilities that provide public safety
19 services.

20 (k) Notwithstanding any other provisions of this section
21 to the contrary, the purchasing agency may engage in



1 negotiations with the highest-ranked offeror in a public-private
2 partnership procurement and may negotiate:

3 (1) The statement of work;

4 (2) The contract price as it is affected by negotiating
5 the statement of work; and

6 (3) Any other terms and conditions reasonably related to
7 those expressly authorized for negotiation in the
8 solicitation of public-private partnership proposals.

9 Accordingly, offerors shall not submit, and the public
10 entity shall not accept, for negotiation any terms and
11 conditions that are not reasonably related to those
12 expressly authorized for negotiation in the
13 solicitation of public-private partnership proposals.

14 In conducting negotiations, there shall be no
15 disclosure of any information derived from proposals
16 submitted by competing offerors.

17 (1) Notwithstanding any other provisions of this section
18 to the contrary, a purchasing agency may terminate negotiations
19 with an offeror of a public-private partnership if such
20 negotiations are not successful and commence negotiations with



1 the next highest scoring offeror, and continue this process
2 until the public entity has:

- 3 (1) Determined to award the contract to the offeror with
4 whom it is currently negotiating;
5 (2) Determined to continue negotiations with the offerors;
6 or
7 (3) Determined to cancel the solicitation of the public-
8 private partnership."

9 SECTION 5. Section 103D-323, Hawaii Revised Statutes, is
10 amended by amending subsections (a) and (b) to read as follows:

11 "(a) Unless the policy board determines otherwise by
12 rules, bid security shall be required only for construction
13 contracts to be awarded pursuant to sections 103D-302 and 103D-
14 303 and when the price of the contract is estimated by the
15 procurement officer to exceed \$25,000 or, if the contract is for
16 goods or services, the purchasing agency secures the approval of
17 the chief procurement officer. Bid security shall be a bond
18 provided by a surety company authorized to do business in the
19 State, or the equivalent in cash, or otherwise supplied in a
20 form specified in rules[-] and shall be in an amount equal to at
21 least five per cent of the amount of the bid.



(b) ~~[Bid security shall be in an amount equal to at least five per cent of the amount of the bid.]~~ In addition to other requirements of this section, one or more of the following forms of security shall be required to assure the timely, faithful, and uninterrupted provision of operations or maintenance services as elements of public-private partnership procurements:

(1) Operations period surety bonds that secure the performance of the contractor's operations and maintenance obligations;

(2) Letters of credit in an amount appropriate to cover the cost to the purchasing agency of preventing infrastructure service interruptions for a period up to twelve months; and

(3) Appropriate written guarantees from the contractor or depending upon the circumstances, from the contractor's parent corporation, to secure the recovery of re-procurement costs to the purchasing agency in the event of a default in performance by the contractor."

SECTION 6. This Act is not intended to modify and shall not be construed to expand or limit any rights and duties of any



1 laws relating to the subject of this Act, unless expressly
2 stated herein.

3 SECTION 7. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so much
5 thereof as may be necessary for fiscal year 2018-2019 to:

- 6 (1) Establish and operate the office of public-private
7 partnership; and
8 (2) Establish and fill the state public-private
9 partnership coordinator position and one additional
10 position; provided that these positions may be added
11 to the position count for the department of accounting
12 and general services and shall be appointed by the
13 comptroller and exempt from chapter 76, Hawaii Revised
14 Statutes, to carry out the purposes of this Act.

15 The sum appropriated shall be expended by the department of
16 accounting and general services for the purposes of this Act.

17 SECTION 8. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 9. This Act shall take effect on July 1, 2112.



Report Title:

Office of Public-Private Partnership; Procurement Code;
Appropriation

Description:

Establishes the Office of Public-Private Partnership and the position of State Office of Public-Private Partnership Coordinator. Adds public-private partnership project delivery methods to the Procurement Code and related conditions and requirements. Requires an annual report. Appropriates funds. (SB2705 HD2)

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

