

Honolulu, Hawaii

MAR 19 2010

RE: H.B. No. 2901  
H.D. 2  
S.D. 1

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fifth State Legislature  
Regular Session of 2010  
State of Hawaii

Madam:

Your Committee on Judiciary and Government Operations, to which was referred H.B. No. 2901, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT,"

begs leave to report as follows:

The purpose of this measure is to provide for the selection of the most qualified offerors for design-build projects, which combine design and construction into a single contract, and to encourage the participation of Hawaii-based companies, including local small firms, in the design-build proposal process by:

- (1) Establishing a discretionary procedure under which the head of a purchasing agency may procure construction contracts using the design-build process under a single request for proposals, where not more than five offerors selected on their qualifications submit proposals; and
- (2) Requiring that the purchasing agency pay a stipend in an unspecified amount to each unsuccessful design-build offeror who submits a technically-responsive proposal if the offeror authorizes the purchasing agency to use elements of its designs that were included in the proposal, and the offeror waives its right to protest the award.

Testimony in support of the measure was submitted by three private organizations, including the American Society of Civil



Engineers, and thirty-eight individuals. One county agency submitted testimony in opposition to the measure. Comments regarding the measure were submitted by the Department of Accounting and General Services and the State Procurement Office. Written testimony presented to your Committee may be reviewed on the Legislature's website.

Your Committee finds that while design-build projects are being increasingly used for construction projects, the up-front costs to a design or civil engineering firm to respond to a request for proposals can be enormous and, if the firm does not receive the award, represent costs and resources that are lost. According to testimony received by your Committee, the up-front costs involved in developing designs can be particularly daunting for small firms that do not have the resources to gamble on a design-build award. This places small firms at a disadvantage, as they are not always able to expend the resources to submit a responsive proposal. Moreover, the design-build procurement process, as currently implemented, may focus too much on the cost of the project, while not adequately looking at the quality of the design concepts submitted and whether the firm offering the proposal is highly qualified. In the end, this may result in projects that are substandard.

Your Committee notes that several interested stakeholders, particularly members of the American Society of Civil Engineers, the Department of Accounting and General Services, and the State Procurement Office, have been working together to arrive at a compromise bill that addresses the parties' major areas of concern, including the point at which a stipend would be offered, the purpose of the stipend, and how firms are evaluated. The amended measure, as described below, reflects the progress of the discussions and negotiations between the parties thus far. Your Committee hopes that the parties will continue to collaborate to come up with a measure to which all the parties agree.

Your Committee has amended this measure by deleting its contents and inserting language proposed by the State Procurement Office, with certain amendments. As amended, the measure provides that:

- (1) At the discretion of the head of the purchasing agency, construction projects may be procured using the design-build process;



- (2) The requirements for the submission of proposals may be specified in the solicitation;
- (3) None of the criteria that the evaluation committee uses to develop the list of no more than five offerors who are most highly qualified are weighted more than any other criterion;
- (4) The location of the principal office of the offeror is not a factor in determining which offeror is highly qualified;
- (5) The procurement officer may offer a stipend if the officer determines, in his or her discretion, that it is advantageous to offer a stipend in order to encourage competition and innovation and to increase the best value of offers received without exceeding the budget;
- (6) The request for proposals shall include a statement of the maximum number of offerors who will be selected to submit proposals and the stipend, if any, that will be provided to offerors who submit a technically-responsive offer;
- (7) An offeror will not be required to authorize the purchasing agency to use elements of its designs that were included in its proposal or waive its right to protest the award in order to be offered a stipend;
- (8) If the procurement officer cancels the contract, then all responsive offerors shall be offered the stipend, which shall be paid within ninety days from the award of the contract or from the day of decision to cancel the contract;
- (9) The measure shall be repealed on June 30, 2012; and
- (10) The measure shall be effective on September 14, 2047, in order to allow the stakeholders to further discuss the provisions of the measure and to resolve any disagreements regarding its terms.

As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations that is attached to this report, your Committee is in accord with the intent and



purpose of H.B. No. 2901, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2901, H.D. 2, S.D. 1, and be referred to the Committee on Ways and Means.

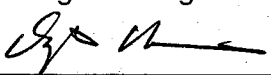
Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Government Operations,

  
BRIAN T. TANIGUCHI, Chair



The Senate  
Twenty-Fifth Legislature  
State of Hawaii

**Record of Votes**  
**Committee on Judiciary and Government Operations**  
**JGO**

|   |  |   |     |         |
|---|--|---|-----|---------|
| Bill / Resolution No.:*<br><div style="font-size: 1.2em; font-family: cursive;">HB 2901, HD2</div>  | Committee Referral:<br><div style="font-size: 1.2em; font-family: cursive;">JGO, WAM</div> | Date:<br><div style="font-size: 1.2em; font-family: cursive;">3/18/10</div> |     |         |
| <input type="checkbox"/> The committee is reconsidering its previous decision on this measure.<br>If so, then the previous decision was to: _____   |  |   |     |         |
| The Recommendation is:<br><div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"> <input type="checkbox"/> Pass, unamended<br/>2312         </div> <div style="text-align: center;"> <input checked="" type="checkbox"/> Pass, with amendments<br/>2311         </div> <div style="text-align: center;"> <input type="checkbox"/> Hold<br/>2310         </div> <div style="text-align: center;"> <input type="checkbox"/> Recommit<br/>2313         </div> </div> |  |   |     |         |
| Members   | Aye  | Aye (WR)  | Nay | Excused |
| TANIGUCHI, Brian T. (C)   | ✓  |   |     |         |
| TAKAMINE, Dwight Y. (VC)  | ✓  |   |     |         |
| BUNDA, Robert   |  |   |     | ✓       |
| GABBARD, Mike   | ✓  |   |     |         |
| NISHIHARA, Clarence K.  | ✓  |   |     |         |
| SLOM, Sam   |  | ✓   |     |         |
|   |  |   |     |         |
|   |  |   |     |         |
|   |  |   |     |         |
|   |  |   |     |         |
|   |  |   |     |         |
|   |  |   |     |         |
|   |  |   |     |         |
|   |  |   |     |         |
|   |  |   |     |         |
|   |  |   |     |         |
|   |  |   |     |         |
|   |  |   |     |         |
|   |  |   |     |         |
| <b>TOTAL</b>  | 4  | 1   | 0   | 1       |
| Recommendation: <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <input checked="" type="checkbox"/> Adopted           <input type="checkbox"/> Not Adopted         </div>   |  |   |     |         |
| Chair's or Designee's Signature:<br><div style="font-size: 1.5em; font-family: cursive; margin-top: 10px;">  </div>  |  |   |     |         |
| <b>Distribution:</b> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div>Original<br/>File with Committee Report</div> <div>Yellow<br/>Clerk's Office</div> <div>Pink<br/>Drafting Agency</div> <div>Goldenrod<br/>Committee File Copy</div> </div>  |  |   |     |         |

**\*Only one measure per Record of Votes**