

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
HOUSE COMMITTEE
ON
FINANCE
ON
February 24, 2011
H.B. 985, H.D. 1

RELATING TO PROCUREMENT

Chair Oshiro and members of the Committee, thank you for the opportunity to testify on H.B. 985, H.D. 1.

The Department of Accounting and General Services supports H.B. 985, H.D. 1 and defers to the State Procurement Office testimony for comments.

Thank you for the opportunity to testify on this matter.

NEIL ABERCROMBIE
GOVERNOR



AARON S. FUJIOKA
ADMINISTRATOR

**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
FINANCE

February 24, 2011

2:30 p.m.

HB 985, HD 1

RELATING TO PROCUREMENT.

Chair Oshiro, Vice Chair Lee and committee members, thank you for the opportunity to testify on HB 985, HD 1. 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 to read as follows:

"§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 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 provided that for construction projects, the procurement officer may determine to use the procure services using design-build method; provided further that: 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 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~~

~~— (2) Pay stipends to unsuccessful offerors; provided that the amount of the stipend and the terms under which the stipends will be paid are stated in the request for proposals.~~

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

(2) A request for proposals is issued to initially request prequalification of 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 the number of proposals is stated in the request for proposals and prompt notice is given to all offerors as to which proposals have been short-listed; and

(3) Unsuccessful offerors may be paid a conceptual design fee, provided the amount of the fee and the terms under which fee 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 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.

(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]~~ 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.

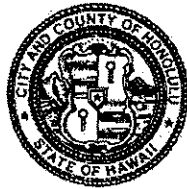
(h) In cases of awards made under this section, nonselected offerors may submit a written request for debriefing to the ~~[chief]~~ procurement officer ~~[or designee]~~ within three working days after the posting of the award of the contract. Thereafter, the ~~[head of the purchasing agency]~~ procurement 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 the debriefing is completed.

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

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

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: www.honolulu.gov

PETER B. CARLISLE
MAYOR



MICHAEL R. HANSEN
DIRECTOR

February 23, 2011

The Honorable Marcus R. Oshiro, Chair
and Members
House of Representatives
Committee on Finance
The Twenty-Sixth State Legislature
State Capitol
Honolulu, Hawaii 96813

Dear Chair Oshiro and Members:

Subject: House Bill No. 985 H.D. 1 Relating to Procurement, Competitive Sealed Proposal
Design-Build Procedures

The City & County of Honolulu opposes H.B. 985 H.D. 1 which proposes to codify specific procedures for competitive sealed proposals using the design-build process. We believe that the Hawaii Public Procurement Code must remain flexible to meet the procurement needs of the City and that the bill is unnecessary.

For example, during the procurement process we may receive more good proposals than the limit that we had originally stated in the request for proposals and may, in fairness to the offerors, desire to consider these proposals. Secondly, not all design-build projects are of the complexity that would warrant payment of stipends to unsuccessful offerors and not all offerors will incur proposal preparation costs or commit resources to proposal preparation that would justify the cost to the public of the payment of stipends. Codifying a rigid process that destroys flexibility would be costly and disadvantageous.

Furthermore, the procedures provided in the bill, including the design-build process and the provision for payment of stipends to offerors, are not prohibited by the existing statute. Accordingly, a government agency may currently follow the process outlined by the bill if desired. Therefore, the bill is unnecessary. We stand opposed to H.B. 985 H.D. 1.

Sincerely,

A handwritten signature in black ink that reads "Michael R. Hansen".

Michael R. Hansen, Director
Budget & Fiscal Services

TESTIMONY OF
ON BEHALF OF THE HAWAII PROCUREMENT INSTITUTE

TO THE HOUSE COMMITTEE ON FINANCE

February 24, 2011

2:30 P.M.

HB985, HD1: Relating to Procurement

IN SUPPORT OF HB985, HD1, RELATING TO PROCUREMENT

Chair Oshiro, Vice-Chair Lee, and Committee members, thank you for the opportunity to testify in support of HB985, HD1.

This Bill will amend HRS 103D-303 by adding guidance to the sealed proposal contract award method. The added guidance will provide for selection of design-build contractors through a two-phased competitive process. In the first phase, competitors' statements of qualifications will be evaluated to determine their experience, qualifications, past performance, and other criteria relevant to their skill and ability to perform the project's design and construction work. In the second phase, a specified number of the highest qualified competitors will be allowed to submit proposals to compete for the project based upon price and other evaluation factors included in a request for proposals.

The Hawaii Procurement Institute strongly supports this Bill as a valuable enhancement to the existing sealed proposal award process. The two-phased process addressed in this Bill was included in the American Bar Association's *2000 Model Procurement Code for State and Local Governments*. It is also followed by the federal government under applicable federal acquisition rules. It provides a fair method to attract highly qualified offerors in competitions for important state and local infrastructure contracts.

To refine the Bill and achieve its full intent, we recommend the following amendments to the Bill:

- At the beginning of the first sentence of subsection (i), add the words "Notwithstanding the requirements of subsection (a)," to avoid any confusion concerning the interrelationship of the subsections.
- At the end of subsection (i)(2), delete "or as specified in the solicitation in accordance with subsection (e)" to avoid confusion concerning the interrelationship of the subsections.
- At subsection (i)(2)(B), revise the language to permit delegation of authority to designate evaluation committee members and specify the numbers of committee members. In addition, the subsection should assure the process provides for meaningful competition specify the minimum number of offerors to

compete at phase 2. We suggest the following language to achieve these purposes:

"The chief procurement officer or designee shall designate an evaluation committee composed of not less than three qualified, impartial, independent members who shall evaluate each offeror's statement of qualifications and shall develop a list of no more than three offerors who are deemed to be the most highly qualified . . . "

- At subsection (i)(3), we recommend the redesignation of this subparagraph to (i)(2)(D). The committee should also adopt additional language to ensure clarity in the process. We suggest the following language be adopted by the committee:

"(2)(D) At the onset of the request for proposal phase, the purchasing agency shall:

(i) Notify all unsuccessful offerors of their nonselection and the number, but not the identity, of offerors selected to compete in phase two;

(ii) Notify offerors selected to compete in phase two of the number, but not the identity, of offerors selected to compete in phase two. Offerors selected to compete in phase two shall further be invited to submit proposals and shall be informed of the amount of the conceptual design fee that will be provided to offerors who submit technically acceptable proposals;

(ii) Further notify offerors selected to compete in phase two of the relative importance of price and other evaluation factors if such information has not already been provided in the request for proposals."

Thank you for your efforts to improve procurement practices in Hawai'i and for affording us the opportunity to submit testimony.



ECS, INC.

615 Piikoi Street, Suite 207
Honolulu, Hawaii 96814
(808) 591-8181 Fax: (808) 591-9098

February 23, 2011

House Committee on Finance

Hearing Date: Thursday, February 24, 2:30 p.m., Conference Room 308

Honorable Representatives Marcus R. Oshiro, Chair; Marilyn B. Lee, Vice Chair; and Members of the House Committee on Finance

Subject: HB 985, Relating to Procurement
TESTIMONY IN SUPPORT

Dear Chair Oshiro, Vice Chair Lee, and Committee Members:

Our company strongly supports HB 985, Relating to Procurement, with the revisions proposed by the American Council of Engineering Companies of Hawaii (ACECH). 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.

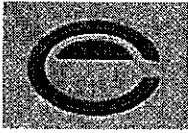
The bill would also provide for the granting of a stipend (conceptual design fee) to the unsuccessful short-listed teams. Preparation of a design-build proposal is an onerous task, and teams can spend more than \$1 million to prepare their proposal. Studies have shown that the providing even a nominal 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 this measure. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,

A handwritten signature in black ink that reads "Timothy S. Higa".

Timothy S. Higa, P.E.
Principal
ECS, Inc.



ENGINEERING CONCEPTS, INC.
Consulting Engineers

February 23, 2011

SUBMITTED TESTIMONY VIA WEBSITE: <http://www.capitol.hawaii.gov/emailtestimony>.

House Committee on Finance

Hearing Date: Thursday, February 24, 2:30 p.m., Conference Room 308

Honorable Representatives Marcus R. Oshiro, Chair; Marilyn B. Lee, Vice Chair; and Members of the House Committee on Finance

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

Dear Chair Oshiro, Vice Chair Lee, and Committee Members:

Our company strongly supports **HB 985, Relating to Procurement, with the revisions proposed by the American Council of Engineering Companies of Hawaii (ACECH)**. 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. 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 this measure. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,

Myron Nomura
President

1099 Alakea Street, Suite 2400
Honolulu, Hawaii 96813
Tel: 808-523-8499
Fax: 808-533-0226
www.brownandcaldwell.com

February 23, 2011

Brown AND
Caldwell

House Committee on Finance
Hearing Date: Thursday, February 24, 2:30 p.m., Conference Room 308

Honorable Representatives Marcus R. Oshiro, Chair; Marilyn B. Lee, Vice Chair; and
Members of the House Committee on Finance

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

Dear Chair Oshiro, Vice Chair Lee, and Committee Members:

Brown and Caldwell strongly supports **HB 985, Relating to Procurement, with the revisions proposed by the American Council of Engineering Companies of Hawaii (ACECH)**. 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.


HB 985 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 also allows the procurement officer the option to pay the short-listed D-B teams for their conceptual designs. 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 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,

Brown and Caldwell



Douglas B. Lee, P.E.
Vice President



February 23, 2011

House Committee on Finance

Hearing Date: Thursday, February 24, 2:30 p.m., Conference Room 308

Honorable Representatives Marcus R. Oshiro, Chair; Marilyn B. Lee, Vice Chair; and Members of the House Committee on Finance

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

Dear Chair Oshiro, Vice Chair Lee, and Committee Members:

I would like to offer our 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 (preferably no more than 3) 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 allows the procurement officer the option to pay the design-build team for the conceptual design only for the losing short-listed teams. Preparation of a design-build proposal is 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 the providing even a nominal fee to the losing 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 and they may get some reimbursement for their pursuit costs.

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,

A handwritten signature in black ink that reads "Alan R. Levy".

Alan R. Levy | DBIA, LEED AP BD+C
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



Community Planning and Engineering, Inc.

February 23, 2011

House Committee on Finance

Hearing Date: Thursday, February 24, 2:30 p.m., Conference Room 308

Honorable Representatives Marcus R. Oshiro, Chair; Marilyn B. Lee, Vice Chair; and Members of the House Committee on Finance

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

Dear Chair Oshiro, Vice Chair Lee, and Committee Members:

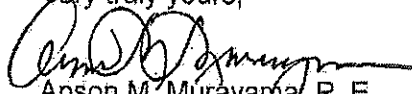
Our company strongly **supports HB 985, Relating to Procurement, with the revisions proposed by the American Council of Engineering Companies of Hawaii (ACECH)**. The revised bill would provide for the procurement of design-build contract teams in a manner used by the Federal Government and many other 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. 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 this measure. Please do not hesitate to contact us if you have any questions regarding our testimony.

Very truly yours,


Anson M. Murayama, P. E.
Chief Executive Officer



AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

February 23, 2011

President

Sheryl Nojima, Ph.D., P.E.
Gray Hong Nojima & Assoc.
Ph: (808) 521-0306

President-Elect

Douglas Lee, P.E.
Brown and Caldwell
Ph: (808) 523-8499

Treasurer

Terrance Arashiro, P.E.
Austin, Tsutsumi & Assoc.
Ph: (808) 533-3646

Secretary

Mike Street, P.E.
Bowers+Kubota Consulting
Ph: (808) 836-7787

Past President

John Katahira, P.E.
The Limtiaco Consulting Group
Ph: (808) 596-7790

National Director

Jon Nishimura, P.E.
Fukunaga & Assoc.
Ph: (808) 944-1821

Directors

Beverly Ishii-Nakayama, P.E.
Shigemura, Lau, Sakanashi,
Higuchi & Assoc.
Ph: (808) 942-9100

Joel Yuen, P.E.
Insynergy Engineering
Ph: (808) 521-3773

Robin Lim, P.E.
Geolabs
Ph: (808) 841-5064

Ginny M. Wright
Executive Director
P.O. Box 88840
Honolulu, HI 96830
Ph: (808) 234-0821
Cell: (808) 741-4772
Fx: (808) 234-1721
Email: gwright@acechawaii.org
Website: www.acechawaii.org

House Committee on Finance

Hearing Date: Thursday, February 24, 2:30 p.m., Conference Room 308

Honorable Representatives Marcus R. Oshiro, Chair; Marilyn B. Lee, Vice Chair; and Members of the House Committee on Finance

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

Dear Chair Oshiro, Vice Chair Lee, 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, 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. It would establish 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 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.

HB 985 also provides for the granting of a conceptual design fee to the unsuccessful short-listed teams. Preparation of a design-build proposal is an onerous task, and teams can spend more than \$1 M 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 design professional firms are small businesses, and we feel that providing a conceptual design fee would encourage their participation.

ACECH has been working with the State Chief Procurement Officer to reach agreement on the bill language. The attached Senate companion bill, SB779 SD1, takes into consideration the CPO's comments, as well as those from the construction industry provided at the Senate hearing. We propose modifying HB985 to match the attached senate version, with the following clarification:

On page 2, lines 1-3, revise the definition of "Design-build" to meet the nationally recognized definition:

"Design-build" means a project delivery method in which one entity - the design-build team - works under a single contract with the project owner to provide design and construction services."

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

Sincerely,

AMERICAN COUNCIL OF ENGINEERING COMPANIES OF HAWAII

Sheryl E. Nojima, PhD, PE
President

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

S.B. NO. 779
S.D. 1

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

SECTION 1. The legislature finds that the current procurement process for design-build project contracts requires offerors to prepare, in most instances, conceptual design drawings as part of their proposals. This requires a considerable initial investment and may prevent many local firms from submitting proposals for design-build contracts. As a result, purchasing agencies may experience a decrease in competition, an increase in prices, and may potentially be forced to sacrifice design and construction creativity.

The purpose of this Act is to provide for the selection of the most qualified offerors for design-build projects and to encourage the participation of Hawaii-based companies, including local small firms, in the design-build proposal process.

SECTION 2. Section 103D-104, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"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."

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

"§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 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 procure services using the design-build method; provided further that:~~

- (1) The cost of preparing proposals is high in view of the size, estimated prices, and complexity of the procurement;
- (2) A request for proposals is issued to initially request pre-qualification of offerors, in order to select from among them a short list of up to three responsible offerors prior to submittal of proposals or discussions and evaluations pursuant to subsection (f); provided that the number of short-listed proposals shall be stated in the request for proposals and prompt public notice shall be given to all offerors as to which proposals have been short-listed; and
- (3) Unsuccessful offerors may be paid a conceptual design fee; provided that the amount of the fee and the terms under which the fee is to be paid shall be 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 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]~~ non-selected offeror a prompt debriefing ~~[in accordance with rules adopted by the policy board]~~. Any protest by the ~~[requester]~~ non-selected 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."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on January 1, 2012.

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 non-selection. Effective 1/1/2012. (SD1)

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

February 23, 2011

House Committee on Finance

Hearing Date: Thursday, February 24, 2:30 p.m., Conference Room 308

Honorable Representatives Marcus R. Oshiro, Chair; Marilyn B. Lee, Vice Chair; and Members of the House Committee on Finance

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

Dear Chair Oshiro, Vice Chair Lee, 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, Relating to Procurement with revisions proposed by the American Council of Engineering Companies of Hawaii (ACECH)**. 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.

Very truly yours,

FUKUNAGA & ASSOCIATES, INC.



Jon K. Nishimura, P.E.
President

FUKUNAGA & ASSOCIATES, INC.





February 23, 2011

EMAILED TESTIMONY

**Hearing Date: Thursday, February 23, 2:30 p.m., Conference Room 308
House Committee on Finance**

Honorable Representatives Marcus R. Oshiro, Chair; Marilyn B. Lee, Vice Chair; and Members of the House Committee on Finance

**Subject: HB 985, H.D. 1 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. 1 Relating to Procurement**. This bill 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 (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 process is utilized by the Federal Government and many other jurisdictions.

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 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 appreciate the opportunity to provide testimony in **support of HB 985, H.D. 1**. 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

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

February 23, 2011

House Committee on Finance

Hearing Date: Thursday, February 24, 2:30 p.m., Conference Room 308

Honorable Representatives Marcus R. Oshiro, Chair; Marilyn B. Lee, Vice Chair; and Members of the House Committee on Finance

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

Dear Chair Oshiro, Vice Chair Lee, and Committee Members:

Our company strongly supports HB 985, Relating to Procurement, with the revisions proposed by ACECH. 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.

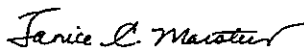
The purpose of the bill is to put in place a two-step process for procuring design-build teams. At the first stage, potential design-build teams would submit their qualifications particular to the proposed project. A selection committee would select the most qualified teams (up to five) that would then 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. 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 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



THE LIMTIACO CONSULTING GROUP
CIVIL ENGINEERING AND ENVIRONMENTAL CONSULTANTS

February 23, 2011

House Committee on Finance

Hearing Date: Thursday, February 24, 2:30 p.m., Conference Room 308

Honorable Representatives Marcus R. Oshiro, Chair; Marilyn B. Lee, Vice Chair; and Members of the House Committee on Finance

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

Dear Chair Oshiro, Vice Chair Lee, and Committee Members:

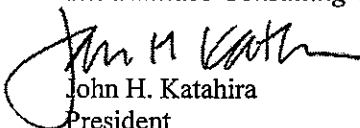
The Limtiaco Consulting Group, a small and local business, **strongly supports HB 985, Relating to Procurement**. HB 985 will promote fair and engaging design-build procurement procedures consistent with agencies highly experienced with design-build projects, such as the federal government.

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



828 Fort Street Mall
Suite 500
Honolulu, HI 96813
Tel: 808-521-3773
Fax: 808-521-3993
www.insynergyeng.com

February 23, 2011

House Committee on Finance

Hearing Date: Thursday, February 24, 2:30 p.m., Conference Room 308

Honorable Representatives Marcus R. Oshiro, Chair; Marilyn B. Lee, Vice Chair; and Members of the House Committee on Finance

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

Dear Chair Oshiro, Vice Chair Lee, and Committee Members:

Our company strongly supports **HB 985, Relating to Procurement, with the revisions proposed by the American Council of Engineering Companies of Hawaii (ACECH)**. 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. 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.

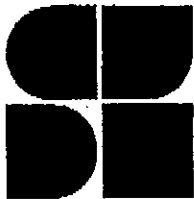
We appreciate the opportunity to provide testimony regarding this measure. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,



Barry Jim On, P.E.
Vice President

1916 Young Street • 2nd Floor
Honolulu, HI 96826
PH (808) 942-9100
FAX (808) 942-1899



SHIGEMURA, LAU, SAKANASHI, HIGUCHI & ASSOCIATES, INC.

February 23, 2011

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

House Committee on Finance

Hearing Date: Thursday, February 24, 2:30 p.m., Conference Room 308

Honorable Representatives Marcus R. Oshiro, Chair; Marilyn B. Lee, Vice Chair; and
Members of the House Committee on Finance

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

Dear Chair Oshiro, Vice Chair Lee, and Committee Members:

Our company strongly supports **HB 985, Relating to Procurement, with the revisions proposed by the American Council of Engineering Companies of Hawaii (ACECH)**. 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. 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.

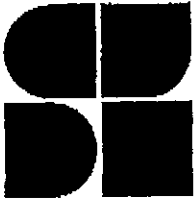
We appreciate the opportunity to provide testimony regarding this measure. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,

Craig H. Sakanashi, S.E.
Principal

Consulting Structural Engineers

1916 Young Street • 2nd Floor
Honolulu, HI 96826
PH (808) 942-9100
FAX (808) 942-1899



SHIGEMURA, LAU, SAKANASHI, HIGUCHI & ASSOCIATES, INC.

February 23, 2011

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

House Committee on Finance
Hearing Date: Thursday, February 24, 2:30 p.m., Conference Room 308

Honorable Representatives Marcus R. Oshiro, Chair; Marilyn B. Lee, Vice Chair; and
Members of the House Committee on Finance

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

Dear Chair Oshiro, Vice Chair Lee, and Committee Members:

Our company strongly supports **HB 985, Relating to Procurement, with the revisions proposed by the American Council of Engineering Companies of Hawaii (ACECH)**. 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. 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.

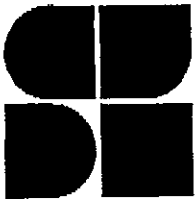
We appreciate the opportunity to provide testimony regarding this measure. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,

Beverly Ishii-Nakayama, S.E.
Principal

Consulting Structural Engineers

1916 Young Street • 2nd Floor
Honolulu, HI 96826
PH (808) 942-9100
FAX (808) 942-1899



SHIGEMURA, LAU, SAKANASHI, HIGUCHI & ASSOCIATES, INC.

February 23, 2011

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

House Committee on Finance
Hearing Date: Thursday, February 24, 2:30 p.m., Conference Room 308

Honorable Representatives Marcus R. Oshiro, Chair; Marilyn B. Lee, Vice Chair; and
Members of the House Committee on Finance

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

Dear Chair Oshiro, Vice Chair Lee, and Committee Members:

Our company strongly supports **HB 985, Relating to Procurement, with the revisions proposed by the American Council of Engineering Companies of Hawaii (ACECH)**. 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. 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 this measure. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,

Wayne K. Higuchi, S.E.
Principal

Consulting Structural Engineers

1916 Young Street • 2nd Floor
Honolulu, HI 96826
PH (808) 942-9100
FAX (808) 942-1899



SHIGEMURA, LAU, SAKANASHI, HIGUCHI & ASSOCIATES, INC.

February 23, 2011

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

House Committee on Finance

Hearing Date: Thursday, February 24, 2:30 p.m., Conference Room 308

Honorable Representatives Marcus R. Oshiro, Chair; Marilyn B. Lee, Vice Chair; and
Members of the House Committee on Finance

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

Dear Chair Oshiro, Vice Chair Lee, and Committee Members:

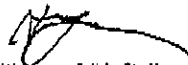
Our company strongly supports **HB 985, Relating to Procurement, with the revisions proposed by the American Council of Engineering Companies of Hawaii (ACECH)**. The revised bill would provide for the procurement of design-build contract teams in a manner used by the Federal Government and many other 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. 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 this measure. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,


Howard K.C. Lau, S.E.
President

Consulting Structural Engineers

AIA Hawaii State Council

FIN
2.24.11
2:30 PM

February 24, 2011

Honorable Marcus Oshiro, Chair
House Committee on Finance

Re: **House Bill 985 HD 1**
Relating to Procurement

Dear Chair Oshiro 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.

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 1.



Design Build Institute of America Western Pacific Region

5855 E. Naples Pkwy, Suite 301, Long Beach, CA 90803 Phone 562-434-0516 Fax 562-434-9378

www.dbiawp.org



February 23, 2011

House Committee on Finance

Hearing Date: Thursday, February 24, 2:30 p.m., Conference Room 308

Honorable Representatives Marcus R. Oshiro, Chair; Marilyn B. Lee, Vice Chair; and Members of the House Committee on Finance

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

Dear Chair Oshiro, Vice Chair Lee, 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**. HB 985 is aligned with our 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. A copy of our recent 2010 Position Statement for Stipends is attached for your reference.

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 (preferably no more than 3) 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 allows the procurement officer the option to pay the design-build team for the conceptual design only for the losing short-listed teams. Preparation of a design-build proposal is 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 the providing even a nominal fee to the losing 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 regarding HB 985. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,

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

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

DESIGN-BUILD INSTITUTE OF AMERICA

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



WWW.DBIA.ORG

INTEGRATION IS OUR FOUNDATION

DESIGN-BUILD INSTITUTE OF AMERICA

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.

Copyright © 2010 by the Design-Build Institute of America.

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.



KAI HAWAII
STRUCTURAL & FORENSIC ENGINEERS

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

February 23, 2011

House Committee on Finance

Hearing Date: Thursday, February 24, 2:30 p.m., Conference Room 308

Honorable Representatives Marcus R. Oshiro, Chair; Marilyn B. Lee, Vice Chair; and Members of the House Committee on Finance

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

Dear Chair Oshiro, Vice Chair Lee, and Committee Members:

Our company strongly **supports HB 985, Relating to Procurement, with the revisions proposed by the American Council of Engineering Companies of Hawaii (ACECH)**. 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. 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 this measure. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,

Ken Hayashida, P.E.
President
KAI Hawaii, Inc.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

February 22, 2011

TO: THE HONORABLE REPRESENTATIVE MARCUS OSHIRO, CHAIR AND
MEMBERS OF THE COMMITTEE ON FINANCE

SUBJECT: H.B. 985, HD1 RELATING TO PROCUREMENT.

NOTICE OF HEARING

DATE: Thursday, February 24, 2011
TIME: 2:30 P.M.
PLACE: Conference Room 308

Dear Chair Oshiro 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, HD1 Relating To Procurement.

H.B. 985, HD1 proposes to enact a design build procurement process modeled on the 2000 Model procurement Code of the American Bar Association.

The proposed procedure will give the procurement officer the choice of using a design build alternative Request for Proposal for high value, complex construction projects with payment of stipends to unsuccessful offerors.

The GCA believes that the implementation of this two step procedure for the procurement of design build construction projects as proposed in HB 985, HD1 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, HD1.

Thank you for the opportunity to testify on this matter.