

JAN 18 2019

A BILL FOR AN ACT

RELATING TO THE OFFICE OF PUBLIC-PRIVATE PARTNERSHIP.

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. Public-private
5 partnership projects will help the state and local governments
6 undertake certain capital improvement projects in a more cost-
7 effective and efficient manner.

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



1 performance in its delivery of assets and services for the
2 benefit of the general public.

3 SECTION 2. Chapter 201, Hawaii Revised Statutes, is
4 amended by adding a new part to be appropriately designated and
5 to read as follows:

6 "PART . OFFICE OF PUBLIC-PRIVATE PARTNERSHIP

7 §201- Office of public-private partnership;
8 established. There is established within the department of
9 accounting and general services an office of public-private
10 partnership to support state and local government utilization of
11 best practices in contracting for public-private partnerships so
12 that the life cycle cost of a project can be delivered at a
13 lower cost than traditional delivery processes.

14 §201- Duties. The office of public-private partnership
15 shall:

16 (1) Create a strategic plan for providing advisory
17 services to state and county agencies that includes:

18 (A) Objectives and goals for the office and criteria
19 to measure the objectives and goals;

20 (B) A website for maintaining the pipeline of public-
21 private projects and best practice resources that



1 meet the office of public-private partnership's
2 objectives and goals;

3 (C) A framework for retention of qualified legal,
4 financial, and technical advisors that can assist
5 in the delivery of services contemplated by this
6 part; and

7 (D) The necessary finances to establish fee
8 structures for advisory services to maintain the
9 office;

10 (2) Coordinate collaboration among state and county
11 agencies to analyze the value of potential public-
12 private partnership delivery over other delivery
13 methods permitted in chapter 103D and other needs and
14 goals of the state and county agency or using agency;

15 (3) Provide to the purchasing agency best practice
16 processes for analysis of and contracting for public-
17 private partnerships, including modeling the potential
18 economic benefits and financial outcomes and contract
19 terms and conditions that will achieve those economic
20 benefits and financial outcomes;



(4) Create and maintain an analysis report of the value of public-private partnership delivery over traditional delivery for each public-private partnership project.

The analysis report shall include:

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

(5) Assist those state and county agencies and their respective purchasing agencies or using agencies having an interest in public-private partnership projects with the legal authority to coordinate activities that involve responsibilities of multiple governmental agencies or using agencies, and encourage the timely and effective implementation and completion of project milestones and objectives among multiple governmental agencies;

(6) Develop educational and advisory programs that enhance the public-private project procurement process to continuously encourage best practice procurement of public-private partnership projects that will result



1 in improved infrastructure and government services in
2 the Hawaii;

3 (7) Assist state and county agencies and using agencies in
4 formulating specific program and procurement documents
5 to solicit public-private partnerships; and

6 (8) Undertake the program established in section 26-6
7 relating to centralized engineering and office leasing
8 services, to facilitate facility agreements between
9 the State and private investors for the sale of
10 facilities including operation and maintenance of
11 public buildings for departments of the State."

12 SECTION 3. Section 103D-104, Hawaii Revised Statutes, is
13 amended by adding four new definitions to be appropriately
14 inserted and to read as follows:

15 "Design-build-finance-operate-maintain" means a project
16 delivery method in which the purchasing agency enters into a
17 single contract for design, construction, financing, operation,
18 and maintenance of an infrastructure facility over a
19 contractually defined period.

20 "Design-build-operate-maintain" means a project delivery
21 method in which the purchasing agency enters into a single



1 contract for design, construction, operation, and maintenance of
2 an infrastructure facility over a contractually defined period.

3 "Independent peer reviewer services" means additional
4 professional services provided to the purchasing agency in
5 design-build-operate-maintain or design-build-finance-operate-
6 maintain procurements to confirm that the key elements of the
7 professional engineering and architectural design provided by
8 the contractor conform to the applicable standard of care.

9 "Infrastructure facility" means a building, structure, or
10 network of buildings, structures, pipes, controls, and equipment
11 that provide transportation, utilities, public education, or
12 public safety services. "Infrastructure facility" includes
13 government office buildings; public schools; courthouses; jails;
14 prisons; water treatment plants, distribution systems, and
15 pumping stations; wastewater treatment plants, collection
16 systems, and pumping stations; solid waste disposal plants,
17 incinerators, landfills, and related facilities; public roads
18 and streets; highways; public parking facilities; public
19 transportation systems, terminals, and rolling stock; and rail,
20 air, and water port structures, terminals, and equipment."



1 SECTION 4. Section 103D-303, Hawaii Revised Statutes, is
2 amended by amending subsection (i) to read as follows:

3 "(i) In addition to any other provisions of this section,
4 construction projects may be solicited through a request for
5 proposals to use the design-build ~~[method,]~~ design-build-
6 finance-operate-maintain, or design-build-operate-maintain
7 project delivery method; provided that:

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

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

20 (3) The criteria for pre-qualification of offerors, design
21 requirements, development documents, proposal



1 evaluation criteria, terms of the payment of a
2 conceptual design fee, or any other pertinent
3 information shall be stated in the request for
4 proposals [-]; and

5 (4) Each request for proposals to use the design-build-
6 operate-maintain or design-build-finance-operate-
7 maintain project delivery method shall:

8 (A) State the relative importance of:

9 (i) Demonstrated compliance with the design
10 requirements;

11 (ii) Offeror qualifications;

12 (iii) Financial capacity;

13 (iv) Project schedule;

14 (v) Price or lifecycle price for the design-
15 build-operate-maintain and design-build-
16 finance-operate-maintain procurements; and

17 (vi) Other factors, if any; and

18 (B) Require each offeror for a project to identify
19 qualified and competent independent peer reviewer
20 services, which shall be an additional evaluation
21 factor in the award of the contract:



1 (i) If the contract price is estimated to exceed

2 \$10,000,000;

3 (ii) If the contract period of operations and

4 maintenance is at least ten years; or

5 (iii) In other circumstances established by rule."

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

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

19 (b) ~~[Bid security shall be in an amount equal to at least~~
20 ~~five per cent of the amount of the bid.]~~ In addition to other
21 requirements of this section, one or more of the following forms



1 of security shall be required to assure the timely, faithful,
2 and uninterrupted provision of operations and maintenance
3 services as elements of design-build-finance-operate-maintain or
4 design-build-operate-maintain services:

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

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

12 (3) Appropriate written guarantees from the contractor or,
13 depending upon the circumstances, from parent
14 corporations to secure the recovery of re-procurement
15 costs to the purchasing agency in the event of a
16 default in performance by the contractor."

17 SECTION 6. There is appropriated out of the general
18 revenues of the State of Hawaii the sum of \$ or so
19 much thereof as may be necessary for fiscal year 2019-2020 to
20 establish and operate the office of public-private partnership.



S.B. NO. 882

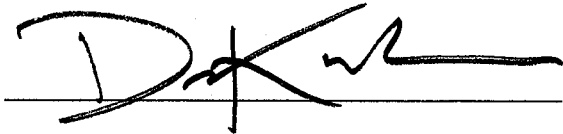
1 The sum appropriated shall be expended by the department of
2 accounting and general services for the purposes of this Act.

3 SECTION 7. This Act is not intended to modify and shall
4 not be construed to expand or limit any rights and duties of any
5 laws relating to the subject of this Act, unless expressly
6 stated herein.

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

9 SECTION 9. This Act shall take effect on July 1, 2019.

10
INTRODUCED BY:

A handwritten signature in black ink, appearing to be "D.K. W.", written over a horizontal line.

S.B. NO. 882

Report Title:

Department of Accounting and General Services; Office of Public-Private Partnership; Appropriation

Description:

Establishes the office of public-private partnership within DAGs. Adds design-build-finance-operate-maintain and design-build-operate-maintain project delivery methods to the types of methods that may be used in construction projects solicited through competitive sealed proposals. Requires additional forms of bid security, for projects that use the "design-build-finance-operate-maintain" or "design-build-operate-maintain" delivery methods. Appropriates funds to establish and operated the office of public-private partnership.

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

