

ACT 211

H.B. NO. 985

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 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 and 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 contracts and to encourage the participation of Hawaii-based companies, including local small firms, in the design-build contract 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.”

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.

(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]~~ non-selected 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]~~ upon which the debriefing is completed.

(i) In addition to any other provisions of this section, construction projects may be solicited through a request for proposals to use the design-build method; provided that:

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

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

- (3)¹ The criteria for pre-qualification of offerors, design requirements, development documents, proposal evaluation criteria, terms of the payment of a conceptual design fee, or any other pertinent information shall be stated in the request for proposals.”

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, 2011.

(Approved July 11, 2011.)

Note

1. Should be underscored.